

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Emily C. Mezera

90-03468

Name of Respondent(s)

Dreher & Associates, Inc.
Morton Greenberg

REPRESENTATION

For Claimant: Emily C. Mezera was represented by Peter J. Wifler, Esq. of Salvi, Salvi & Wifler, Lake Zurich, Illinois.

For Respondents: Dreher & Associates, Inc. and Morton Greenberg were represented by Nancy L. Pionk, Esq. and Steven B. Varick, Esq. of McBride Baker & Coles, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: December 7, 1990

Claimant's Submission Agreement signed on: November 26, 1990

Joint Statement of Answer filed by Respondent Dreher & Associates, Inc. and Morton Greenberg on: February 15, 1991

Respondent Dreher & Associates, Inc.'s Submission Agreement signed on: February 18, 1991 by Richard H. Burgess, Vice-President, Dreher & Associates, Inc.

Respondent Morton Greenberg's Submission Agreement signed on: November 6, 1991

HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Date/Sessions: November 6, 1991 for two (2) sessions

Hearing Location: Chicago, Illinois

CASE SUMMARY

Claimant Emily C. Mezera ("Mezera") alleged that Respondent Morton Greenberg ("Greenberg"), while employed by or acting as an agent for Respondent Dreher & Associates, Inc. ("Dreher"), committed the following acts in connection with Mezera's investment in the VMS Mortgage Investment Fund and the Decade Securities, Corp. Fund:

1. Misrepresented, failed to explain and failed to adequately investigate the risks associated with these investments;
2. Failed to properly advise Mezera, placing her heavily into high risk, poor liquidity investments;
3. Placed Mezera in investments which were unsuitable given Mezera's stated investment objectives and particular needs, including the proportion of the investment to her total assets; and
4. Failed to explain that Mezera could not withdraw her funds without substantial penalties.

In addition, Dreher is alleged to have breached its duty to supervise Greenberg and investigate the methods and manners in which he sold investments to Mezera. Based upon the above allegations, Mezera asserted claims for violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; other state and federal securities laws; common law fraud; breach of fiduciary duty; and violations of the NASD Rules of Fair Practice.

Respondents Dreher and Greenberg denied the material allegations of the Statement of Claim, alleging that:

1. Greenberg had an unblemished reputation and no prior complaints;
2. Mezera was kept fully informed of the risks of the investments in the applications she signed and the prospectus she received and, in addition, was notified of all options regarding the sale of VMS;
3. Greenberg followed prudent guidelines for a client of Mezera's age and stated objectives, placing 11% of her investment into income real estate, 18% into VMS and the remainder of her total funds in a fixed annuity and bank deposits; and
4. Dreher had no control over VMS's financial problems;

RELIEF REQUESTED

Claimant Mezera requested the entry of an award against the Respondents for \$125,000.00 for losses sustained; \$10,000.00 for opportunity costs during the period of investment; and attorneys' fees and costs, or in the alternative, a

recision of the purchase plus costs and attorneys' fees, and any other relief the panel deemed just appropriate.

Respondents Dreher and Greenberg requested that the Statement of Claim be dismissed and denied in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

On November 6, 1991, the day of hearing, Respondents Dreher and Greenberg presented a motion for leave to file an Amended Statement of Answer instantner. Claimant objected to the Motion. After hearing the arguments of the parties, the panel determined that the Motion would be denied.

At the close of hearing, Respondents Dreher and Greenberg requested leave to file a post-hearing brief. Claimant objected to the motion. After hearing the arguments of the parties, the panel determined that the motion would be denied.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$200.00 and the hearing session deposit of \$750.00 previously deposited by the Claimant Emily C. Mezera. Claimant Emily C. Mezera is liable for and shall pay to the NASD additional forum fees in the sum of \$250.00. Respondent Dreher & Associates, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$250.00. Respondent Morton Greenberg is liable for and shall pay to the NASD forum fees in the sum of \$250.00.

Fees are payable to the National Association of Securities Dealers, Inc.

BY THE ARBITRATION PANEL

Dated:

Alan J. Fisher
Alan J. Fisher, Esq.
Public Arbitrator
Chairperson

December 12, 1991

Nelson H. Layman
Nelson H. Layman
Public Arbitrator

December 7, 1991

Martin D. Cohen
Martin D. Cohen
Industry Arbitrator

December 15, 1991

Date Served: _____