

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Judith I. Brunton

No. 90-03635

Name of Respondents

Anchor National Financial Services, Inc.  
Frank G. Kelbel

---

REPRESENTATION OF PARTIES

For Claimants: James A. Bolt, Esq.

For Respondents: Thomas R. Schrimpf, Esq. of Hinshaw and  
Culbertson.

CASE INFORMATION

Statement of Claim filed: December 21, 1990.

Claimant's Submission Agreement signed on: December 13, 1990.

Statement of Answer filed by Respondent, Anchor National  
Financial Services, Inc. on: June 5, 1991.

Respondent Anchor National Financial Services, Inc.'s  
Submission Agreement signed on: May 29, 1991.

The NASD does not have a record of Respondent Frank G. Kelbel's  
Answer to the Statement of Claim, or his Submission Agreement.

HEARING INFORMATION

Hearing dates: February 3, 1992. Two Sessions.  
February 4, 1992. Two Sessions.  
February 13, 1992. Two Sessions.

Hearing Location: Milwaukee, Wisconsin.

## CASE SUMMARY

Claimant Judith I. Brunton ("Claimant") alleged: misrepresentation and fraud; unsuitability; violation of Wisconsin Statute 551.31(6); breach of contract and NASD Rules; violation of anti-fraud Section 10(b) of the Securities and Exchange Act of 1934; violation of the Organized Crime Control Act 18 U.S.C. Section 1962(A); violation of Wisconsin Organized Crime Control Act Wisconsin Statute Section 946.83(1); and breach of fiduciary duty by Respondents Anchor National Financial Services, Inc. ("Anchor") and Frank G. Kelbel ("Kelbel"). The allegations arose from recommendations of, and transactions in the following Limited Partnerships: American Retirement Villas; NDII Real Estate Limited Partnership II; Equitec Income Real Estate Investors; Gemini VIII; Merrico Resources, Inc.; Gemini X; Gemini XII; Realty Income Corp. #24; and Gemini XV.

Claimant alleged that Respondent Kelbel had represented himself to be an expert in the field of investments and financial planning and had also failed to reveal that the investments listed above were risky, lacked secondary markets, and that the investments could not provide guaranteed returns. Given Claimant's alleged unsophistication, inexperience, and age, Claimant relied solely on the misrepresentations made by Respondent Kelbel and was induced to purchase the Limited Partnerships listed above. Claimant also alleged that Respondent Kelbel had a direct pecuniary interest in the sale of these Limited Partnerships units which he failed to disclose to Claimant. Claimant further alleged that Respondent Anchor was paid a portion of the fees and commissions for the support of the enterprise. Lastly, Claimant alleged the investments were unsuitable given her stated goals, income and sophistication.

In its Statement of Answer, Respondent Anchor denied that Respondent Kelbel was at any time employed by Respondent Anchor. Respondent Kelbel was alleged to have been an independent contractor and a registered representative of Respondent Anchor. Respondent Anchor further denied each material allegation contained in the Statement of Claim. Respondent Anchor also asserted the following affirmative defenses:

1. The complaint fails to state a claim against Respondent Anchor upon which relief can be granted;
2. Respondent Anchor at all times acted in good faith and is therefore not legally responsible for any fraud committed by an independent contractor under any of the theories alleged in the complaint;
3. Claimant has failed to mitigate any damages she may have sustained by prematurely selling her investments in the Limited Partnerships and/or failing to obtain fair market value for the Limited Partnerships at the time she liquidated her investments;

4. The Claims may be barred by the applicable statute of limitations and/or doctrine of laches.

#### RELIEF REQUESTED

Claimant requested award against each of the Respondents as follows:

1. for violations outlined in counts 1, 2, 3, and 6 for actual damages in the amount of \$111,186.53;
2. for the violations outlined in count 4, for triple the actual amount of damages (\$333,559.59), plus reasonable attorney's fees;
3. for the violations as outlined in count 5 for double the actual amount of damages (\$222,373.86), plus a reasonable attorney's fees;

Respondent Anchor requested that the arbitration complaint be dismissed on its merits.

#### OTHER ISSUES CONSIDERED & DECIDED

Respondent Frank G. Kelbel did not file with the NASD a properly executed submission to arbitration, nor has Frank G. Kelbel answered the Claims, but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure, appeared and testified at the hearing, and is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed by a counterpart copy 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 original remains on file with the NASD.

#### AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Anchor National Financial Services, Inc. and Frank G. Kelbel are jointly and severally liable for, and shall pay to Claimant, Judith I. Brunton, the sum of \$83,500.00 as satisfaction of all her claims herein;
2. Claimant Judith I. Brunton's claims under the Federal Organized Crime Control Act, 18 U.S.C. Section 162(A), and under

the Wisconsin Organized Crime Control Act, Wisconsin Statute Section 946.83(1) are hereby expressly denied and dismissed with prejudice; and

3. Each Party shall bear their own costs of this arbitration except as set forth below.

#### FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

One Postponement Fee            \$1,000.00

Six Hearing Sessions X \$1,000.00 = \$6,000.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$250.00, and shall refund the partial hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

The hearing sessions fees of \$6,000.00 are assessed jointly and severally against Respondents Anchor National Financial Services, Inc. and Frank G. Kelbel.

Pursuant to Section 30(b) and Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 paid by Respondent Anchor Financial Services, Inc., for postponement of the September 18 and 19, 1991 scheduled hearings. In addition Respondent Anchor National Financial Services, Inc. is liable for the balance of the postponement fee in the amount of \$900.00.

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

Dated:

April 14, 1992

/s/ Zel S. Rice II  
Zel S. Rice II  
Presiding Chair  
Public Arbitrator

April 10, 1992

/s/ Stanley F. Hack  
Stanley F. Hack  
Public Arbitrator

April 14, 1992

/s/ John E. Sundeem  
John E. Sundeem  
Industry Arbitrator