

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Geraldine K. Murphie

Claimant

and

91-00007

Cowen & Company and Ernest A. Mishne

Respondents

REPRESENTATION OF PARTIES

Claimant Geraldine Murphie was represented by Quentin R. Wittrock, Esq. of Gary, Plant, Mooty, Mooty & Bennett, P.A., Minneapolis, Minnesota.

Respondents Cowen & Company and Ernest Mishne were represented by Daniel J. Donovan, Esq. of Cowen and Company, New York, New York.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about January 2, 1991, Claimant Geraldine Murphie ("Murphie") alleged she was an unsophisticated investor, and having learned through Respondents Cowen & Company and Ernest Mishne ("Respondents") representations that they were experts in the field of securities, she turned over her investment account to the respondents, also executing a "Margin Agreement". Murphie further alleged that after relying on Respondent's expertise and skills, Respondents made innumerable transactions on Murphie's account without prior notification to Murphie. Murphie alleged that these transactions were excessive in size and frequency in light of Murphie's financial objectives of stability and also were highly speculative. Specifically, Murphie alleged a few examples of the short-term trading Respondents engaged in: (1) On October 3, 1986, Landsend securities were purchased for \$30 and sold on or about October 14, 1986 for \$27; (2) On October 6, 1986 UTS Med, Inc. securities were purchased for \$51.25 and sold three days later for the same price. Murphie alleged that many of the purchases contained a hidden purchase commission which drained the account of more than \$10,000.

Murphie alleged fraud/deceit, Section 10 (b)(5) of the Federal Securities Law, breach of contract, breach of fiduciary duty, fraud, misrepresentation, conversion, and RICO as a result of said conduct. In a joint Statement of Answer filed with the NASD on or about April 8, 1991, Respondents denied that any of the securities purchased were either "highly speculative" or inconsistent with Murphie's objectives. Respondents also denied selling Murphie's securities without her prior knowledge or approval at any time after Respondent Mishne's discretionary trading authority was revoked. Furthermore, respondents alleged that Murphie never complained to them. Respondents alleged that the investments were suitable, and deny that their actions have in any way resulted in damage to Murphie.

Respondents asserted the Statute of Limitations, laches, waiver, estoppel and ratification as affirmative defenses.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$65,000, RICO damages, plus interest, costs, arbitration fees, and any other fees and relief deemed appropriate by the panel.

Respondents requested that the claim be dismissed and that they be awarded their costs and any additional relief deemed just and proper.

PROCEDURAL MATTERS

On September 26, 1991 in Minneapolis, Minnesota during a hearing lasting a total of two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 22, 1990 by Claimant Geraldine K. Murphie, on April 8, 1991 by Creighton H. Peet on behalf of Respondent Cowen & Co., and on April 8, 1991 by Respondent Ernest Mishne.

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 original(s) remain on file with the NASD.

AWARD

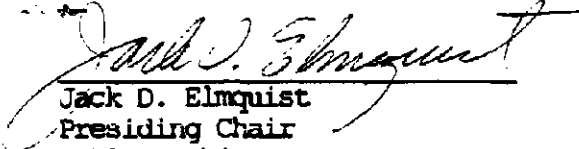
The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents,, jointly and severally, shall be and hereby are liable for and shall pay to the Claimant actual damages in the amount of \$30,000;

2. Each of the parties shall bear their own costs and expenses other than those specifically enumerated herein;
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the claim filing fee in the amount of \$150 and the hearing session deposit in the amount of \$ 500.00 previously deposited with the NASD by the Claimant. Respondents shall reimburse to the Claimant the \$650 which was previously deposited with the NASD by the Claimant. Respondents shall be and hereby are liable for and shall pay to the NASD additional forum fees in the amount of \$500.

Dated:

Oct 10 1991



Jack D. Elmquist
Presiding Chair
Public Arbitrator

George Fox
Public Arbitrator

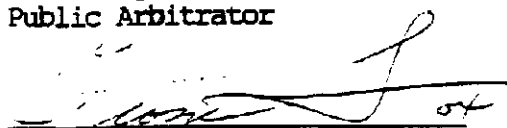
Leslie L. Ogg
Industry Arbitrator

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Dated:

10/16/91

Jack D. Elmquist
Presiding Chair
Public Arbitrator



George Fox
Public Arbitrator

Leslie L. Ogg
Industry Arbitrator

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Dated:

Jack D. Elmquist
Presiding Chair
Public Arbitrator

George Fox
Public Arbitrator

October 21, 1991

Leslie L. Ogg
Leslie L. Ogg
Industry Arbitrator