

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

The Evangelical Lutheran Good Samaritan Society

Name of Respondents

Miller, Johnson & Ruehn, Inc. f/k/a Miller Securities, Inc.  
Eldon Miller  
David Chin

REPRESENTATION

For Claimant The Evangelical Lutheran Good Samaritan Society: Terrence J. Fleming, Esq. of Lindquist & Vennun, Minneapolis, Minnesota.

For Respondents Miller, Johnson & Ruehn, Inc. and Eldon Miller: Steven E. Rau, Esq., Albert A. Woodward, and Philip T. Colton of Maun & Simon, Saint Paul, Minnesota.

For Respondent David Chin: David P. Pearson, Esq. and Thomas E. Boyd, Esq. of Winthrop & Weinstine, Saint Paul, Minnesota.

CASE INFORMATION

Statement of Claim filed: January 10, 1991.

Claimant's Submission Agreement signed on: January 4, 1991 by Mark Jerstad on behalf of Evangelical Lutheran Good Samaritan Society.

Joint Statement of Answer and Counterclaim filed by Respondents Miller, Johnson & Ruehn, Inc. and Eldon Miller on: April 1, 1991. Statement of Answer and Counterclaim filed by Respondent David Chin on: April 1, 1991.

Respondent, Miller, Johnson & Ruehn, Inc.'s Submission Agreement signed on: March 27, 1991 by Eldon Miller on behalf of Miller, Johnson & Ruehn, Inc.  
Respondent Eldon Miller's Submission Agreement signed on: March 27, 1991.  
Respondent David Chin's Submission Agreement signed on: April 22, 1991.

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ARBITRATION-CHICAGO

91-00131

#### HEARING INFORMATION

Pre-Hearing Conference: None held.

Hearing Dates/Sessions: January 13, 1992 for two (2) sessions  
January 14, 1992 for two (2) sessions  
January 15, 1992 for two (2) sessions  
January 16, 1992 for two (2) sessions  
January 17, 1992 for two (2) sessions  
January 20, 1992 for two (2) sessions

Hearing Location: Minneapolis, Minnesota.

#### CASE SUMMARY

Claimant The Evangelical Lutheran Good Samaritan Society ("Claimant") alleged that Respondents Miller, Johnson & Ruehn, Inc. and Eldon Miller, through its broker, Respondent David Chin (hereinafter "Respondents") engaged in excessive trading thereby generating excessive commissions which the Claimant characterized as unreasonable, in connection with Claimant's account held with Miller, Johnson & Ruehn, Inc. Claimant further alleged that the investments made were unsuitable for Claimant, a non-profit organization. Three of the investments which Claimants alleged best illustrate Respondents mishandling of the account are: MFS Special Value Trust, Van Kampen Merritt Prime Rate Income Trust, and Transamerica Equipment Leasing Income Fund Limited Partnership.

Respondents Miller, Johnson & Ruehn, Inc. and Eldon Miller ("Respondents") alleged that there was no excessive trading in the account. Respondents alleged that Claimant is a large sophisticated, institutional investor who had knowledge through a prospectus, and control, of the said investments. Respondents alleged that Claimant failed to establish that Respondents had control over the trading. Respondents further alleged that Claimant did not suffer any damage. Respondents, in their counterclaim, requested attorney's fees and costs incurred in defending the arbitration proceeding pursuant to Minn. Stat. Section 549.21, subd.2.

Respondent David Chin ("Chin") alleged that he did not "control" the account; Chin alleged that Claimant made the investment decisions as well as the general investment objectives. Chin, in his counterclaim, requested attorney's fees and costs incurred in defending the arbitration proceeding.

Claimant, in their answer to the counterclaim, alleged the counterclaim to be specious.

#### RELIEF REQUESTED

Claimant requested payment of its actual damages plus interest and costs in an amount in excess of \$1 million against respondents Miller Securities, Eldon Miller and David Chin; punitive damages in an amount in excess of \$1 million against Respondents Miller Securities, Eldon Miller and David Chin; Reasonable attorney's fees pursuant to S.D. Codified Laws Ann. Section 47-31A-410 and Minn. Stat. Section 80A.23 against Respondents Miller Securities, Eldon Miller and David Chin; and such other proper and equitable relief as is allowed by law and as the panel deems just and equitable.

Respondents Miller, Johnson & Ruehn, Inc., Eldon Miller, and David Chin requested attorney's fees and costs incurred in defending this action.

#### 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.

#### 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. Claimant The Evangelical Lutheran Good Samaritan Society's claims against Respondents Miller Johnson & Ruehn, Inc., Eldon Miller, and David Chin shall be and hereby are dismissed and denied in its entirety;
2. Respondents Miller Johnson & Ruehn, Inc., Eldon Miller, and David Chin's counterclaims shall be and hereby are dismissed and denied in their entirety;
3. Each party shall bear their own costs and expenses incurred, including attorney's fees, other than those costs and expenses specifically enumerated herein;

FORUM FEES

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

12 sessions X \$1000 = \$12,000 minus hearing session deposit of \$1000 = net \$11,000 due.

Forum fees Assessed Against: Respondent Miller, Johnson & Kuehn, Inc.

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

BY THE ARBITRATION PANEL

Cassandra Mihalchick, Esq.  
Cassandra Mihalchick, Esq.  
Public Arbitrator  
Chairperson

Dated:

2-25-92

Howard James Seesel, Jr.  
Howard James Seesel, Jr.  
Public Arbitrator

Donald P. James  
Donald P. James  
Industry Arbitrator

Date of Decision: \_\_\_\_\_

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Public Arbitrator

Donald F. James  
Industry Arbitrator

Feb. 24 1992

Date of Decision: \_\_\_\_\_

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Dated: \_\_\_\_\_

Cassandra Mihalchick, Esq.  
Public Arbitrator  
Chairperson

Howard James Seesal, Jr.  
Public Arbitrator

Donald F. James  
Industry Arbitrator

Feb 25, 1992

Date of Decision: \_\_\_\_\_