

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Virginia I. McCoskrey

No. 91-00254

Name of Respondent(s)

Jerald R. Carey
The Carey Company

REPRESENTATION OF PARTIES

For Claimant: Douglas P. McLeod, Esq. and Karl Zobrist, Esq. of Blackwell Sanders Matheny Weary & Lombardi.

For Respondents: Ron Hollinger, Esq. of Boland, McQuain, Block, DeHardt & Rosenbloom.

CASE INFORMATION

Statement of Claim filed: on February 2, 1991.

Claimant's Submission Agreement signed on: January 22, 1991 by: Virginia I. McCoskrey.

Joint Statement of Answer filed by Respondents Jerald R. Carey and The Carey Company on: April 3, 1991.

Respondents Jerald R. Carey and the Carey Company's Submission Agreement signed on: March 26, 1991 by: Jerald R. Carey on his own behalf, and on behalf of The Carey Company.

HEARING INFORMATION

Hearing dates: September 10, 1991
November 19, 1991

Hearing Location: Kansas City, Missouri

CASE SUMMARY

Claimant Virginia I. McCoskrey ("Claimant") alleged breach of fiduciary duty, unsuitability, violation of Missouri Securities Laws, violation of Section 10 (b) of the 1934 Securities Act and Rule 10-b-5 thereunder, and fraud. Claimant alleged that material facts were omitted or misrepresented in regards to the level of risk posed by the investments made on her behalf by Respondents Jerald R. Carey and The Carey Company ("Respondents"). Claimant further alleged that misrepresentations were made in relation to the performance of the following Real Estate Limited Partnerships and Junk Bond Funds purchased by the Respondents for Claimant's portfolio: Equitec Venture Leasing Investors Partnership; Oppenheimer High Yield Fund; Koyen, Clarke Market Timing Service; Southmark Realty Partners II; and Krupp Insured Mortgage Limited Partnership. Claimant alleged unsophistication, and the need to rely on the Respondents to follow her objectives of conservative investments and capital preservation.

In a joint Statement of Answer the Respondents denied each and every allegation contained in the Statement of Claim. In addition, the Respondents stated the following affirmative defenses:

1. Claimant's claims for relief in Counts 1, 2, and 3 are barred in whole or in part by the applicable statute of limitations, including, but not limited to Section 409.411 R.S.MO. 1986, as amended, and Section 10 (b) of the Securities and Exchange Act of 1934, and Rule 10-b-5 thereunder;

2. Any dispute, claim, or controversy arising more than six years prior to the filing of this claim fails for lack of jurisdiction pursuant to NASD Code of Arbitration Procedure Section 15; and

3. Claimant has failed to state a claim for which relief may be granted.

RELIEF REQUESTED

Claimant requested that the panel award her \$40,000 in damages plus interest, costs, attorney's fees, and punitive damages in the amount of 15 percent of her damages in this case.

Respondents requested that Claimant's Statement of Claim be dismissed, and that the panel grant Respondents' their costs and attorney's fees in 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Jerald R. Carey and The Carey Company are jointly and severally liable for, and shall pay to Claimant Virginia I. McCoskrey the sum of \$9,874.00 plus simple interest at the rate of 9 percent per annum from the date of the Award until paid;
2. Respondents Jerald R. Carey and The Carey Company are jointly and severally liable for, and shall pay to Claimant Virginia I. McCoskrey the sum of \$9,874.00 for punitive damages. The authority for the award of punitive damages is contained in a pre-hearing memorandum filed with the NASD on February 1, 1991;
3. Each party shall bear their own costs and attorney's fees associated with this arbitration; and
4. Claimant Virginia I. McCoskrey is liable for, and shall pay to the NASD the sum of \$400.00 for the postponement of the hearing set for September 23, 1991.

FORUM FEES

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

Postponement fee relating to the postponed hearing set for September 23, 1991 = \$400.00

5 hearing sessions X \$400.00 = \$2,000.00

Postponement fees in the amount of \$400.00 assessed against the Claimant Virginia I. McCoskrey.

Forum fees in the amount of \$2,000.00 assessed jointly and severally against Respondents Jerald R. Carey and The Carey Company.

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, The NASD shall retain the filing fee in the amount of \$120.00 previously paid to the NASD by the Claimant Virginia I. McCoskrey.

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

Dated:

January 16, 1992

/s/Robert E. Fitzgerald
Robert E. Fitzgerald
Presiding Chair
Public Arbitrator

January 17, 1992

/s/James A. Moore
Hon. James A. Moore
Public Arbitrator

January 29, 1992

/s/Will B. Tschudy
Will B. Tschudy
Industry Arbitrator