

9301040

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gale Bailey

91-00345

Name of Respondents

Creative Equity Resources,
Sheila Field,
Field Financial Services, and
Thom Berkowitz.

REPRESENTATION

For Claimant at the hearing: Margaret K. Savage, Esq., Minneapolis, Minnesota.

For Respondent, Creative Equity Resources, Inc. at the hearing: Peter J. Timmons, Esq. of Moss and Barnett, Minneapolis, Minnesota.

For Respondents, Sheila Field and Field Financial Services: Timothy D. Kelly, Esq. and Wendy Snyder, Esq. of Kelly and Berens, Minneapolis, Minnesota.

For Respondent, Than Berkowitz: Thomas Hunziker, Esq. of Dunkley, Bennett: & Christensen, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: January 30, 1991.

Claimant's Submission Agreement signed on: January 30, 1991.

Statement of Answer filed by Respondent, Creative Equity Resources, Inc. on: March 20, 1991. Joint Statement of Answer filed by Respondents Sheila Field and Field Financial Services on: March 21, 1991. Statement of Answer filed by Respondent Than Berkowitz on: March 14, 1991.

Respondent Creative Equity Resources, Inc.'s Submission Agreement signed on: March 20, 1991. Respondents Sheila Field's and Field Financial Service's Submission Agreements signed on: March 13, 1991. Reapondent Than Berkowitz's Submission Agreement signed on: March 14, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: October 1, 1991 for two (2) sessions,
March 12, 1992 for two (2) sessions,
March 13, 1992 for two (2) sessions,
March 23, 1992 for two (2) seeeions,
March 26, 1992 for two (2) sessions,
May 4, 1992 for two (2) sessions,
December 9, 1992 for one (1) session.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Gale Bailey ("Bailey") alleged that Respondents Sheila Field ("Field"), Field Financial Services ("Field Financial"), and Thom Berkowitz ("Berkowitz") recommended investments which were unsuitable for Bailey and also failed to disclose material information in connection with the purchase and sale of securities underwritten by Respondent Creative Equity Resources, Inc. ("Creative Equity"). Bailey further alleged that Field and Berkowitz negligently provided unsuitable investment advice to Bailey, and breached fiduciary duties and duties of due care. Bailey alleged that Creative Equity failed to properly supervise Field and Berkowitz.

Bailey alleged that she was an unsophisticated investor and that she relied heavily on Field's investment advice. Bailey alleged that she requested that Field purchase securities which were safe, conservative, short-term, and liquid, but instead, Field recommended purchase of the following limited partnerships which were highly speculative and illiquid: \$100,000 worth of Z-Mega Farms Limited Partnership I, \$100,000 worth of Pacific Shores RV Resort Limited Partnership mortgage notes, and \$100,000 worth of Meadowbrook Mobile Estate Limited Partnership mortgage notes.

Respondent Creative Equity generally denied the allegations set forth in the Statement of Claim. More specifically, Creative Equity denied breaching any fiduciary duty, denied liability by virtue of failure to supervise, and denied that the investments were unsuitable.

Respondents Field and Field Financial denied telling Bailey that the limited partnerships were safe and also denied that Bailey told them that she was interested in only safe, conservative, short-term, and liquid investments. Field alleged that the investments were suitable for Bailey's investment goal. Field denied any alleged misrepresentation.

Respondent Berkowitz denied that Bailey ever told him that she was interested only in investments which were safe, conservative, short-term, and liquid. Berkowitz further alleged that the investments were suitable.

RELIEF REQUESTED

Claimant requested rescission damages in the amount of \$300,000.00, plus interest, punitive damages, attorney's fees, and costs.

Respondent Creative Equity Resources, Inc. requested that the Statement of Claim be dismissed and that they be granted, costs, disbursements, and attorney's fees. Respondents Sheila Field and Field Financial Services, Inc. requested that the Statement of Claim be dismissed with prejudice, and that they be awarded costs, disbursements, including but not limited to attorney's fees. Respondent Thom Berkowitz requested that the Statement of Claim be dismissed and that they be awarded costs, disbursements, and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing 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 NASP.

After the hearing had concluded on May 4, 1992 and before the Award was served on the parties, the Claimant filed a Motion to Re-Open the hearing pursuant to Section 40 of the Code of Arbitration Procedure which states:

"Where permitted by applicable law, the hearings may be reopened by the arbitrators on their own motion or at the discretion of the arbitrators upon application of a party at any time before the award is rendered."

The panel granted the motion and an additional hearing day was scheduled for December 9, 1992.

AWARD

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

1. Claimant Gale Bailey's requests for rescission of her \$100,000 investment in Z-Mega Farms Limited Partnership I and her \$100,000 investment in Meadowbrook Mobile Estates Limited Partnership, both made on or about January 1, 1988, are hereby granted. Respondents Creative Equity Resources, Inc., Sheila Field, Field Financial Services, and Thom Berkowitz are jointly and severally liable for and shall pay to the Claimant Gale Bailey the sum of Two Hundred Thousand Dollars and No Cents (\$200,000) representing the purchase price of said investments. Claimant Gale Bailey shall cause to be prepared and delivered to Respondents Creative Equity Resources, Inc., Sheila Field, Field Financial Services, and Thom Berkowitz, jointly and severally, instruments reasonably and customarily required to transfer to said Respondents the interest of Claimant, Gale Bailey, in Z-Mega Farms Limited Partnership I and Meadowbrook Mobile Estates Limited Partnership Mortgage Notes;

2. The Respondents Creative Equity Resources, Inc., Sheila Field, Field Financial Services, and Thom Berkowitz shall be and hereby are jointly and severally liable for and shall pay to the Claimant Gale Bailey pre-judgment interest on the Two Hundred Thousand Dollars (\$200,000) which was the amount invested in the two (2) limited partnerships described in paragraph (1) above, at six percent (6%) from February 1, 1988 to the date the award is served on the parties by the NASD;

3. The amount of interest awarded in paragraph (2) above shall be reduced by any distributions made by Z-Mega Farms Limited Partnership I and Meadowbrook Mobile Estates Limited Partnership to the Claimant Gale Bailey from the date when any such payments were made;

4. The Claimant, Gale Bailey's request for rescission damages involving the Pacific Shores RV Resort Limited Partnership Mortgage Notes is denied;

5. The Claim for punitive damages is denied;

6. Other than forum fees which are addressed below, each of the parties shall bear their own costs and expenses incurred herein, including attorney's fees.

FORUM FEES

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

13 sessions X \$750 = \$9,750 minus hearing session deposit of \$750 = \$9,000 due.

Forum fees Assessed Against: Claimant Gale Bailey in the amount of \$4,125 and against the Respondents Sheila Field, Field Financial Services, and Thom Berkowitz, jointly and severally, in the amount of \$4,875.

Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

December 26, 1992

/s/

D. Randall Blohm, Esq.
D. Randall Blohm, Esq.
Chairperson
Public Arbitrator

December 29, 1992

/s/

Arthur L. Sirkin, Esq.
Arthur L. Sirkin, Esq.
Public Arbitrator

December 28, 1992

/s/

Emily B. Boote
Emily B. Boote
Industry Arbitrator

Date Award Served By The NASD: January 19, 1993