

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Pamela S. Vance

ARBITRATION-CHICAGO

91-00813

Name of Respondents

MLB Investments, Ltd.
RAF Financial Corporation
Modesitt, Bushnell, Lucas Group
Donna Bushnell
Kenneth Lee Lucas
Jeffrey Evans Modesitt

REPRESENTATION OF PARTIES

Claimant Pamela S. Vance was represented by Dean A. Aarestad, Esq. and Tamara Walters, Esq. of Aarestad & Dihle, P.C., Denver, CO.

Respondent RAF Financial Corporation was represented by Gene Thornton, Esq. and Russell Burk, Esq. of Hopper and Kanouf, Denver, CO.

Respondents Kenneth Lee Lucas and Jeffrey Evans Modesitt were represented by Russell Bean, Esq. of Krys, Boyle, Golz, Reich & Freeman, Denver, CO.

Respondent Donna M. Bushnell did not appear.

CASE INFORMATION

The Statement of Claim was filed on or about March 13, 1991.

Claimant's Submission Agreement signed on February 28, 1991 by Claimant Pamela S. Vance.

Statement of Answer of Respondent RAF Financial Corporation filed on or about June 4, 1991.

Statement of Answer of Respondents Kenneth L. Lucas and Jeffrey Evans Modesitt, Sr. dated June 21, 1991

Submission Agreement of Respondent Jeffrey E. Modesitt, Sr. signed on June 24, 1991.

Submission Agreement of Respondent Kenneth L. Lucas signed on June 24, 1991.

Submission Agreement of Respondent RAF Financial Corporation signed on April 8, 1991 by Arlene M. Wilson.

HEARING INFORMATION

A pre-hearing conference was held on Friday, November 1, 1991. The hearing was held on Monday, November 4, 1991 and Tuesday, November 5, 1991 in Denver, Colorado for a total of six (6) sessions including the prehearing conference.

CASE SUMMARY

Claimant alleged that Donna Bushnell a registered representative of E.J. Pittock and Company, Inc. n/k/a RAF Financial Corporation made unsuitable investments in her account, that Respondents violated NASD Rules of Fair Practice, violated the Colorado Securities Act, engaged in common law fraud and misrepresentation, breach of contract, breached their fiduciary duty to the Claimant and stated that the doctrine of Respondent Superior applied. Claimant invested in the following stocks: Munson Geothermal, Mutual Oil America Co., Legume, Inc., Apogee Robotics, Inc., Emery Datagraphic, Inc., MegaCom, Inc., Gold Res. Corp. later known as MedSource Systems, Inc., Forum Cap. Corp., Interleukin later known as CEL-SCI Corp., Sentry Environmental Protection Systems Corporation, and Continental Powers Systems, Inc.

Respondent RAF Financial Corporation stated that the Claimant was a sophisticated business person who represented herself as a professional investor. RAF Financial further stated that the Claimant was a sophisticated and knowledgeable investor, that the transactions were consistent with her stated investment objectives and suitable for the Claimant. RAF Financial asserted the following defenses: the claims are barred by the doctrines of estoppel, waiver, laches, ratification, comparative negligence and time barred by the applicable statutes of limitations; that RAF Financial acted in good faith; and that the actions of Respondent Bushnell were beyond the scope of her employment with RAF Financial as an independent contractor.

Respondents Kenneth L. Lucas and Jeffrey Evans Modesitt, Sr. denied that they were control persons or persons with supervisory authority while they were at the predecessor firm of Respondent RAF Financial Corporation. Respondents Lucas and Modesitt further stated that the activities complained of in the Statement of Claim were the activities of Respondent Donna Bushnell. Respondents Lucas and Modesitt asserted the following affirmative defenses: estoppel, waiver, laches, ratification, the doctrine of comparative negligence, and that the claims are time barred by the applicable statutes of limitations.

RELIEF REQUESTED

Claimant requested an award of \$90,000.00, pre-arbitration interest, costs, expert witness fees and attorney's fees.

Respondent RAF Financial Corporation requested that the Statement of Claim be dismissed in its entirety and an award of its attorney's fees and costs.

Respondents Kenneth Lee Lucas and Jeffrey Evans Modesitt requested that

the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file the panel has determined that Respondent Donna M. Bushnell has been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent Donna M. Bushnell had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondent Modesitt, Bushnell, Lucas Group did not submit to arbitration.

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

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. All claims asserted against MLB Investments; Jeffrey Evans Modesitt, Jr.; Kenneth L. Lucas; and Modesitt, Bushnell, Lucas Group, a general partnership shall be and hereby are dismissed.
2. Respondent Donna M. Bushnell shall be and hereby is individually liable for and shall pay to the Claimant Pamela S. Vance the sum of \$109,087.00.
3. Respondents Donna M. Bushnell and RAF Financial Corporation shall be and hereby are jointly and severally liable for and shall pay to the Claimant Pamela S. Vance the sum of \$80,797.00.
4. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$150.00 and shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant as forum fees. In addition the following forum fees

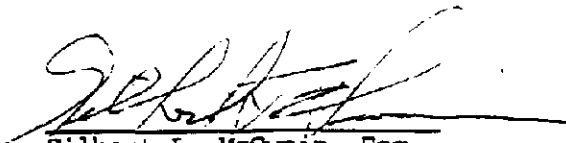
are assessed: \$340.00 assessed against Claimant Pamela Vance. Forum fees in the amount of \$1,960.00 assessed against Respondents RAF Financial Corporation and Donna M. Bushnell jointly and severally.

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

ARBITRATORS CONCURRING

Dated:

Nov. 27, 1991



Gilbert L. McSwain, Esq.
Presiding Chair
Public Arbitrator

James Eichberg
Public Arbitrator

Cletus E. Byrne, Jr.
Industry Arbitrator

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ARBITRATORS CONCURRING

Dated:

November 25, 1991

Gilbert L. McSwain, Esq.
Presiding Chair
Public Arbitrator

James B. Eichberg
James Eichberg
Public Arbitrator

Cletus E. Byrne, Jr.
Industry Arbitrator

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12/2/91

CHICAGO
JUN 1991

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REPORT OF ARBITRATORS

During the course of the hearing on the above captioned matter, the undersigned arbitrators heard testimony and evidence which called into question the activities of Donna M. Bushnell. We feel that the appropriate District office of the NASD investigate Donna Bushnell's actions and determine whether it is appropriate to revoke her license.

ARBITRATORS CONCURRING

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ARBITRATORS CONCURRING

Dated:

September 25, 1991

Gilbert L. McSwain, Esq.
Presiding Chair
Public Arbitrator

James B. Eichberg
James Eichberg
Public Arbitrator

Cletus E. Byrne, Jr.
Industry Arbitrator

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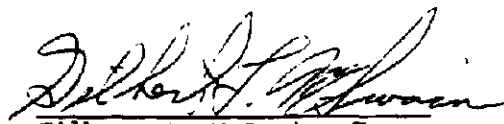
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Dated:

Nov. 27, 1991


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