

N.A.S.D. ~~AWARD~~

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Rankin and Jeanne Ahlm

Claimants

and

91-00826

**John G. Kinnard & Co., Inc.
Kendall Smith**

Respondents

REPRESENTATION OF PARTIES

Claimants Rankin and Jeanne Ahlm were represented by Terrence J. Fleming, Esq. of Lindquist & Vennum, Minneapolis, Minnesota.

Respondents John G. Kinnard & Co., Inc. and Kendall Smith were represented by Ted S. Meikle, Esq. of Fredrikson & Bryon, Minneapolis, Minnesota.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about March 13, 1991, Claimants Rankin and Jeanne Ahlm ("Ahlm") alleged that they were unsophisticated investors with the goal to retire in five to ten years, and that they relied on their broker, Respondent Kendall Smith ("Smith") to handle their investments with expertise. Ahlms further alleged that in connection with their investments, Smith embarked upon a scheme to generate commissions and fees for himself and Respondent John G. Kinnard & Co., Inc. ("Kinnard"), purchased and sold securities without obtaining advance authorization, and also engaged in negligence and negligent misrepresentation.

The Ahlms alleged the following violations: (1) Section 12(2) of the Securities Act of 1933, (2) Section 10 and Section 10(b)(5) of the Securities and Exchange Act of 1934, (3) Minn. Stat. Section 80A.01, (4) breach of contract, (5) breach of fiduciary duty, (6) negligence and negligent misrepresentation, (7) agency and Respondent Superior, and (8) Section 15 of the Securities Act of 1933, Section 20(A) of the Securities and Exchange Act of 1934, Section 80A.23, subd.3 of Minnesota Securities Act.

In a joint Statement of Answer filed with the NASD on or about May 31, 1991, Respondents John G. Kinnard & Co., Inc. and Kendall Smith ("Respondents") generally denied all the allegations set forth in the

Statement of Claim. Respondents alleged that it was clear Mr. Ahlm desired a much more active involvement in the market than simply purchasing mutual funds and letting them sit, and that Mr. Ahlm wanted to invest in shorter term investment vehicles that carried greater risks and rewards. Smith alleged that he made various recommendations to Mr. Ahlm from time to time as seemed appropriate. Smith alleged that he never engaged in discretionary trading in the account, other than the time and price discretion. Respondents further alleged that Mr. Ahlm lost money in his account because of the 1987 stock market crash, and he lost money because he forced a liquidation of stock in the depths of the market doldrums preceding the Gulf War; he cannot blame these events on Kinnard and Smith.

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$280,000 plus interest and costs, punitive damages, and attorney's fees.

Respondents requested that the claims be denied in their entirety and that the Respondents be awarded costs, including attorney's fees.

PROCEDURAL MATTERS

On December 2, December 3, 1991, and December 4, 1991 in Minneapolis, Minnesota during a hearing lasting a total of five sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 8, 1991 by Claimants Rankin Ahlm and Jeanne Ahlm, on May 30, 1991, by Gerald M. Gifford on behalf of Respondent John G. Kinnard & Co., and on May 30, 1991 by Respondent Kendall Smith.

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

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 John G. Kinnard & Co., Inc. and Kendall Smith shall be jointly and severally liable for, and shall pay to the Claimants Rankin and Jeanne Ahlm, actual damages in the amount of \$15,000;
2. No interest shall be awarded;
3. No punitive damages shall be awarded;

4. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated herein;

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the nonrefundable filing fee in the amount of \$250.00 and shall retain the hearing session deposit in the amount of \$1000.00 previously deposited with the NASD by the Claimants. Respondents, jointly and severally, shall reimburse to the Claimants \$1000. Respondents, jointly and severally, shall pay to the NASD additional forum fees in the amount of \$4000.

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

Dated:

December 4, 1991

Jack D. Elmquist, Esq.

Jack D. Elmquist, Esq
Presiding Chair
Public Arbitrator

December 4, 1991

Charles Hickey

Charles Hickey
Public Arbitrator

December 4, 1991

Emily B. Boote

Emily B. Boote
Industry Arbitrator