

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Margaret R. Bruschi)

Name of Respondent(s))

Ken Brown)

Case No. 91-00902

REPRESENTATION

For Claimant, Margaret R. Bruschi ("Bruschi"): Michael R. Casey, Esq. of Casey & Molchan, P.A.

For Respondent, Ken Brown ("Brown"): Adam S. Doner, Esq. of McGee, Jordan, Shuey, et al, P.A.

CASE INFORMATION

Statement of Claim filed: March 19, 1991 and amended on June 3, 1991. Claimant's Submission Agreement signed: March 13, 1991.

Respondent's Statement of Answer filed: May 24, 1991 and amended on November 25, 1991. Respondent's Submission Agreement signed: February 6, 1992.

HEARING INFORMATION

On February 6, and April, 20, 21 and 23, 1992, in Fort Lauderdale, Florida, hearings lasting eight (8) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent made misrepresentations of and omitted to state material facts in connection with the sale of Elmco securities; recommended and sold to Claimant securities which were unsuitable in light of her expressed investment objectives; that Claimant was unsophisticated in securities matters; that a result of Respondent's actions, Claimant lost a substantial sum of money and had income tax deductions disallowed for three years by the IRS; and, that Respondent's actions constituted violations of Section 10(b) of the 1934 Exchange Act, fraud, breach of fiduciary duty, and, Section 517.301, Florida Statutes.

Respondent denied all allegations of wrongdoing and alleged the affirmative defenses of damages caused by Claimant; damages caused by others than Brown; damages caused by change in IRS interpretation of tax laws; estoppel; failure to mitigate; as offeree-representative of Claimant, Brown was not the agent of others; as offeree-representative, Brown is not subject to securities laws as a seller; and, failure to state a claim.

RELIEF REQUESTED

Claimant requested damages in the amount of \$50,000.00, interest, costs, punitive damages, and attorney's fees.

Respondent requested dismissal.

OTHER ISSUES CONSIDERED & DECIDED

1. 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.

2. At the hearing on February 6, 1992, when Respondent was represented by non-attorney Gail F. Aird, Respondent objected to the Panel for the first time because arbitrator Delaney had sat on a panel with Claimant's attorney, Michael Casey, approximately one (1) year ago. Mr. Delaney and the Panel carefully considered the matter pursuant to Canon II.E. of the Canons of Ethics for Arbitrators and concluded that Mr. Delaney could be entirely fair and impartial in hearing and deciding the matter in controversy. Pursuant to Canon II.E., Mr. Delaney declined to recuse himself. Respondent made a Motion for Postponement which was granted.

3. At the hearing on April 20, 1992, Adam S. Doner, Esq. appeared for Respondent. At that time, the Panel heard argument on Respondent's Motion to Dismiss and Motion to Amend Answer. After careful consideration, both Motions were denied.

AWARD

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

1. Respondent, Brown, is found liable and shall pay to the Claimant the amount of \$12,160.00.

2. Claimant's request for attorney's fees, costs, and punitive damages are denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,200.00 (8 sessions x \$400.00). Respondent, Brown, is hereby assessed \$3,200.00, \$1,200.00 of which shall be paid directly to the Claimant in reimbursement for session deposits previously made by the Claimant.
2. Brown shall pay the remaining \$2,000.00 of such forum fees to the National Association of Securities Dealers, Inc., less credit for the \$800.00 previously deposited for additional sessions, for a balance due to the NASD of \$1,200.00. The NASD shall retain the \$1,200.00 in session deposits made by the Claimant which shall be reimbursed as set forth above.
3. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/
Steven D. Elias, Esq.

Public

/s/
John J. Hearn, Esq.

Public

/s/
Douglas Delaney, Jr.

Industry

Date of Decision: May 20, 1992