

Book

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Verona Schlueter

91-01164

Name of Respondents

Dain Bosworth Incorporated
Wayne Smith

REPRESENTATION

For Claimant: Pro Se.

For Respondents: James K. Langdon, II, Esq. of Dorsey & Whitney,
Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: April 11, 1991.

Claimant's Submission Agreement signed on: April 10, 1991.

Joint Statement of Answer filed by Respondents on or about: November 22,
1991.

Respondent Dain Bosworth's Submission Agreement signed on: October 10, 1991.
Respondent Wayne Smith's Submission Agreement signed on: November 22, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: May 28, 1992 for two (2) sessions,
May 29, 1992 for one (1) session.

Hearing Location: Omaha, Nebraska.

CASE SUMMARY

Claimant Verona Schlueter ("Schlueter") alleged that Respondent Dain Bosworth, Inc. ("Dain Bosworth") by its agent, Respondent Wayne Smith ("Smith") failed to provide her with suitable stock recommendations, and engaged in unauthorized and excessive trading in connection with her account held with Respondent Dain Bosworth. Schlueter alleged that as a result of Smith's actions, she suffered losses in her account. More specifically, Schlueter alleged that, among other transactions, Smith failed to follow her

instructions when she asked him to watch her Baldwin United stock and contact her to sell the shares if the stock value went down.

Schlueter alleged that she opened a margin account with Smith. Schlueter alleged that Smith bought two issues for her, Ameranda Hess and Kerr McGee, and the price eventually fell. Schlueter alleged that the additional shares of Apache Petroleum which Smith recommended she buy, eventually fell in value. Schlueter alleged that Smith purchased 200 shares of Communication Systems, sold 800 shares of File Systems, and purchased 500 shares of Denalcor without her authorization. Schlueter further alleged that on numerous occasions, she expressed an interest in various stocks such as UAL, E. F. Johnson, and Magic Chef, which Smith advised against buying, but, Schlueter alleged, were ultimately worthy stock purchases.

Respondents Dain Bosworth and Smith denied the allegations set forth in the Statement of Claim. Dain Bosworth and Smith alleged that there was no abusive treatment, no unsuitable recommendations and no unauthorized or excessive trading. Dain Bosworth and Smith also alleged that Schlueter said that she wished to achieve sufficient profits from her investments to be able to build a second home. Dain Bosworth and Smith alleged that Schlueter became more active and aggressive in her trading. Dain Bosworth and Smith alleged that Schlueter did not suffer any losses after April 1, 1985.

Claimant Schlueter filed a response to the Answer and rebutted the Answer point by point.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$210,022.62, treble damages pursuant to RICO, \$170,000.00 for the "insulting remark", \$100,000.00 for the "comfort remark", interest on the above sums, plus expenses and costs for a total amount of \$1,442,987.27.

Respondents requested that the Statement of Claim be dismissed as meritless.

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.

Respondents filed a Partial Motion To Dismiss the Claim pursuant to Section 15 of the Code of Arbitration Procedure. Claimant filed a response thereto. The panel granted the motion and barred the claims occurring before April 11, 1985.

Claimant filed a Motion To Amend the Statement of Claim to include a claim for RICO-Treble damages. Respondents stipulated to the Amendment.

Claimant filed a Motion To Bar Respondents from Defending The Claim pursuant to Section 25 of the Code of Arbitration Procedure. Respondents filed a response thereto. The panel took the motion under advisement. The motion was later denied.

AWARD

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

1. The Statement of Claim shall be and hereby is denied in its entirety;
2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated herein.

FORUM FEES

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

3 sessions X \$750 = \$2250 minus hearing session deposit of \$750 = net \$1500 due.

Forum fees Assessed Against: Dain Bosworth and Wayne Smith, jointly and severally, in the amount of \$1500.00.

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

By The Arbitration Panel:

Dated:

Arnold J. Stern s/s
Public Arbitrator, Chairperson

July 21, 1992

W. Russell Bowie s/s
Public Arbitrator

July 21, 1992

Bruce E. Hanes s/s
Industry Arbitrator

July 21, 1992

Date Award Served By The NASD: July 27, 1992