

Arbitration

N.A.S.D. AWARD

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )  
 )  
 Name of Claimant(s) )  
 )  
 Nina L. Barwick )  
 )  
 Name of Respondent(s) )  
 )  
 Bonnie Albert )  
 Bruce M. Alster )

Case No. 91-01643

REPRESENTATION

For Claimant, Nina L. Barwick ("Barwick"): Michael R. Casey, Esq. of Casey and Molchan.

For Respondents, Bonnie Albert ("Albert") and Bruce M. Alster ("Alster"): Lloyd R. Schwed, Esq. of Carlson and Schwed.

CASE INFORMATION

Statement of Claim filed: May 29, 1991 and amended October 8, 1991.  
Claimant's Submission Agreement signed: May 29, 1991 and December 9, 1991.

Respondents, Albert and Alster's, Statement of Answer filed: October 2, 1991.  
Respondents' Submission Agreements signed: April 13, 1992.

HEARING INFORMATION

On April 13 and May 6, 1992, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that she is an elderly widow with minimal work experience and earning capacity who is entirely unsophisticated in securities investing; that Albert made misrepresentations of and omitted to state material facts; that Respondents recommended and sold to Claimant unsuitable investments in several high risk funds including junk bond funds and others subject to market volatility; that Respondents knew that Claimant was living on the income from her investments and needed stable income; that Respondents' actions constituted violation of Section 517.301, Florida Statutes, fraud, breach of fiduciary duty and negligent supervision.

Respondents denied all allegations of wrongdoing and alleged that Claimant requested the investment in funds to generate more income and rejected more conservative approaches; was fully informed and authorized each transaction; was advised of the risks and assumed the risks by choosing the funds to achieve the higher income; and, that Alster never met or spoke to the Claimant and the claims against him are slanderous.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$59,000.00, interest, attorney's fees and costs.

Respondents requested dismissal and Alster requested attorney's fees and costs.

#### 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. A Motion to Dismiss made at the beginning of the hearing on behalf of Respondent, Alster, was denied.
3. Thomson McKimmon was initially named as a party to this case but was removed due to the automatic stay entered by the Bankruptcy court in case number 90B10914.

#### 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. Respondent, Alster, is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondent, Albert, is found liable for breach of fiduciary duty and shall pay to the Claimant the amount of \$6,000.00, plus interest at the rate of 8% per annum in the amount of \$1,440.00, for a total due to the Claimant of \$7,440.00
3. Claimant's requests for attorney's fees and costs are denied.
4. Respondent, Alster's, requests for attorney's fees and costs are denied.

OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,600.00 (four sessions x \$400.00). Claimant is hereby assessed \$533.34 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof, leaving a balance due to the National Association of Securities Dealers of \$133.34. Respondents, Alster and Albert, are hereby assessed \$533.33 each payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

  
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Joseph L. Bernstein, Esq.

Public

  
\_\_\_\_\_  
Judy Aron

Public

  
\_\_\_\_\_  
Glenn E. Borresgard

Industry

Date of Decision: May 11, 1992