

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

MAY 2 1992

Name of Claimant

Yvonne F. Thede

91-01647

Name of Respondent(s)

Malone & Associates, Inc.
Robert G. Malone
Robert McGee

REPRESENTATION OF PARTIES

Claimant was represented by Richard T. Wehrle, Esq., Denver, Colorado and Russell K. Bean, Esq. of Krys, Boyle, Golz, Reich & Freedman, Denver, Colorado.

Respondents Malone & Associates, Inc. and Robert G. Malone were represented by Robert Matthews, Esq. of Christman, Bynum & Johnson, Boulder, Colorado.

Respondent Robert McGee did not appear.

CASE INFORMATION

The Statement of Claim was filed on or about May 29, 1991.

Claimant's Submission Agreement signed on May 24, 1991.

Statement of Answer filed by Respondents Malone & Associates, Inc. and Robert G. Malone on or about November 7, 1991.

Respondent Malone & Associates, Inc. and Robert G. Malone's Submission Agreements signed on October 28, 1991 by Robert G. Malone individually and as President of Malone & Associates, Inc.

HEARING INFORMATION

The hearing was held on Tuesday, May 12, 1992 in Denver, Colorado for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that Respondents Malone & Associates, Inc., Robert G. Malone and Robert McGee made misrepresentations in connection with her purchase of Automated Scanning, Inc., Sterling Cable Fund, Saints & Sinners Film Development Company, and Etc. Enterprises, Inc. Claimant further alleged

that the Respondents breached their contractual and fiduciary duties to her, were negligent, and violated the Colorado Securities Act.

Respondents Malone & Associates, Inc. and Robert G. Malone denied the allegations set forth in the Statement of Claim. Respondents further stated that Claimant is a sophisticated, well qualified investor who was very familiar with high risk investments. Respondents stated that the investment decisions were the Claimants and suitable for her in light of her income, net worth and experience. Respondents also asserted the affirmative defense that the claims are barred by applicable statutes of limitations.

Respondent Robert McGee did not file an answer to the Statement of Claim.

RELIEF REQUESTED

Claimant requested an award in the amount of \$51,866.20, plus interest.

Respondents Malone & Associates, Inc. and Robert G. Malone requested that the Statement of Claim be dismissed and that they be awarded expenses incurred in defending this matter.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file the panel has determined that Respondent Robert McGee 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 Robert McGee 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 Robert McGee did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

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, 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 dismissed and denied in its entirety.
2. 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. Respondents Malone & Associates, Inc. and Robert G. Malone shall pay to the NASD the sum of \$500.00 as forum fees. Respondent Robert McGee shall pay to the NASD the sum of \$500.00 as forum fees.

Forum fees are calculated at the rate of \$500.00 per hearing session.

The NASD shall retain any postponement fees previously deposited with the NASD by the parties.

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

Dated:

May 20, 1992

James B. Eichberg
Presiding Chair
Public Arbitrator

May 18, 1992

Robert L. Druva
Public Arbitrator

May 19, 1992

Richard T. Huebner, Esq.
Industry Arbitrator

NASD decision served: May 28, 1992