

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gae C. Preston

91-01933

Name of Respondents

First Affiliated Securities, Inc.;
J.P. Bohn & Co., Inc.;
J. P. Bohn;
Joe Stafford;
Bekhor Securities d/b/a First Affiliated
Securities, Inc.

REPRESENTATION

For Claimant: Gae C. Preston was represented by Mark R. Glasser, Esq. and Cheri Duncan, Esq. of Porter & Clements, located in Houston, Texas.

For Respondent: First Affiliated Securities, Inc. and Bekhor Securities Corporation, doing business as First Affiliated Securities, Inc., were represented by Celso M. Gonzalez-Falla, Esq. of Vinson & Elkins L.L.P., located in Houston, Texas.

J. Patrick Bohn & Co., Inc. and J. Patrick Bohn, individually, were represented by Kathy D. Patrick, Esq. of Gibbs & Ratliff, located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: June 21, 1991.

Claimant's Submission Agreement signed on: June 14, 1991.

Amended Statement of Claim filed: August 14, 1991.

Statement of Answer filed by Respondent, First Affiliated Securities, Inc. and Bekhor Securities Corporation, doing business as First Affiliated Securities, Inc. on: October 23, 1991.

Respondent, Bekhor Securities Corporation, doing business as First Affiliated

Securities, Inc.'s Submission Agreement signed on: October 22, 1992.

Statement of Answer Filed by Respondent J. Patrick Bohn & Co., Inc. on: August 1, 1991.

Respondent J. Patrick Bohn & Co., Inc.'s Submission Agreement signed on: July 29, 1991 by J. P. Bohn, President, J. Patrick Bohn & Co., Inc.

Statement of Answer filed by Respondent J. Patrick Bohn on: August 1, 1992.

Respondent J. P. Bohn's Submission Agreement signed on: July 29, 1991.

Motion to Bar Answer of Respondent Joe Stafford filed by Claimant Gae C. Preston on: September 27, 1991.

Amended Answer and Counterclaim filed by Respondent Bekhor Securities Corporation, doing business as First Affiliated Securities, Inc., on: April 27, 1992.

Respondent Joe Stafford did not file an executed submission agreement or a Statement of Answer.

HEARING INFORMATION

Pre-Hearing Conference: March 13, 1992 for one (1) session without arbitrator;

June 4, 1992 for one (1) session with Arbitrator George T. Barrow, Esq. presiding.

Hearing Date/Sessions: June 15, 1992 for one (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Gae C. Preston ("Preston") alleged that Respondent Joe Stafford ("Stafford"), while employed by or acting as an agent for Respondents First Affiliated Securities, Inc. and Bekhor Securities Corporation, doing business as First Affiliated Securities, Inc. ("First Affiliated"), J. Patrick Bohn & Co., Inc. ("Bohn & Co.") and J. Patrick Bohn ("Bohn"), engaged in unsuitable trading in Preston's account by devoting her funds to short-sales and margin trading in low-grade bonds and the purchase and sale of options and warrants. Preston specifically alleged that:

1. In or around the month of September, 1990, scarcely 6 weeks after Preston received her husband's death benefits, she was approached by Stafford, at whose urging she entrusted to him the sum of \$100,000.00 for conservative investment;
2. Stafford advised Preston that he could obtain a higher return on her investment than the current Certificates of Deposit by devoting these proceeds to a conservative, income-producing investment involving the purchase of bonds and further assured her that her money would be just as safe as if it were invested in CD's;

3. Stafford knew that Preston was an unsophisticated investor who had no previous experience in trading stocks, bonds, or any other publicly-traded securities and, further, Stafford knew that Preston was in a state of emotional turmoil because of the death of her husband only weeks before. Stafford used this knowledge to gain her confidence and trust and to acquire control over her financial affairs;

4. Stafford did not invest in conservative investments, but instead devoted Preston's funds to short-sales and margin trading in low-grade bonds and the purchase and sale of options and warrants without explaining to Preston the risks associated with margin, short-selling and speculation in the bond market;

5. Stafford never advised or consulted with Preston on any investment related matter after receiving her money, even though Preston did not execute any document giving Stafford discretionary trading authority. In addition, Stafford specifically advised Preston to ignore her trade confirmations and monthly statements, as well as any other communications from his firm, recommending that she instead rely upon his periodic verbal reports regarding the status of her investment;

6. On or about April 17, 1991, at a luncheon meeting, Stafford advised Preston that all of her original investment was secure and continuing to earn income for her, and then removed and discarded approximately one-half of the correspondence that she had received from the Respondent brokerage firms purporting to organize her file;

7. Stafford's actions resulted in the loss of the life insurance proceeds paid to Preston upon her husband's death, but also resulted in a margin debit of approximately \$50,000.00; and

8. First Affiliated, Bohn & Co. and Bohn knew or should have known to expect this type of conduct from Stafford because he was hired with their knowledge that twice during his professional career Stafford consented to findings that he wilfully violated the antifraud provisions of the securities laws, resulting in censure and suspension by both the NASD and the Securities and Exchange Commission, and had been denied registration by the State of Illinois due to this suspension.

Based upon the above allegations, Preston asserted claims for violation of Section 12(2) of the 1933 Federal Securities Act (15 U.S.C. 77(1)(2)) and Section 10(b) and Rule 10b-5 of the Securities Exchange Act; violation of Section 33A(2) of the Texas Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-1 et seq. and Article 27.01 of the Tex. Bus. & Comm. Code; breach of contract; breach of fiduciary duty; negligence; failure to supervise; unsuitability and for violation of the Texas Business and Commerce Code, Ann. 17.41 et seq., more commonly known as the Texas Deceptive Trade Practices and Consumer Protection Act.

Respondent First Affiliated denied the material allegations of Preston's

claim, alleging that the trading activity in the account was approved of by Preston and that the damage claims were overstated and fail to account for funds she withdrew from the account. In addition, First Affiliated alleged:

1. The investments in Preston's account were consistent with the investment objectives communicated to Stafford;
2. Preston was a licensed attorney who, with her husband, previously invested in limited partnerships, oil and gas deals, and a variety of other high risk transactions and was clearly not an unsophisticated investor;
3. Preston is barred from recovery under the doctrines of estoppel, waiver, contributory negligence, and assumption of risk; and
4. Preston did not comply with all the prerequisites to discovery under the Texas Deceptive Trade Practices Act ("DTPA") and is not a "consumer" as that term is defined under the Act. Furthermore, the purchase of securities is not a "good" under the DTPA.

In addition, First Affiliated counterclaimed for the debit balance in the amount of \$49,317.55 in connection with a margin call on her purchase of First Capital Holdings.

Respondents Bohn & Co. and Bohn denied the material allegations of Claimant Preston's claim, alleging that:

1. Preston was an attorney, with many years of higher education, and as such, was aware of the importance of reading the documents provided to her, was aware of the risks and rewards inherent in investing in securities, and knew that the law imposed a duty upon her to read the information provided to her by First Affiliated, Stafford and Bohn;
2. Preston failed to act with due diligence and reasonable care in protecting her interests by ignoring the statements and confirmations sent to her, and by failing to inform Bohn of Stafford's alleged unauthorized trading; and
3. Bohn & Co. and Bohn never dealt with Preston, never made investments for her and never communicated with her in any matter;
4. Bohn discharged his obligation to supervise the activities of the First Affiliated broker, Stafford.

Respondent Stafford did not file a Statement of Answer.

RELIEF REQUESTED

Claimant Preston requested entry of an award against Respondents in the sum of \$100,000.00 for the insurance proceeds lost; opportunity costs calculated as 10% interest on the \$100,000.00 investment; recovery of all interest and

commissions; exemplary damages in the amount of at least \$500,000.00; enhanced damages under the Deceptive Trade Practices Act; attorneys' fees and costs; and a decree that she is not liable for any debit balance in any of her accounts with Respondents.

Respondent First Affiliated requested that the panel of arbitrators dismiss the claim filed by Preston and further requested that the panel enter an award to First Affiliated in the amount of \$49,317.55, plus pre and post award interest, and attorneys' fees in connection with the collection of the debit balance.

Respondents Bohn & Co. and Bohn requested that the panel enter an award providing that Preston should take nothing by her actions against them.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing on June 15, 1992, Preston and Respondents Bekhor Securities Corporation, d/b/a First Affiliated Securities, Inc., First Affiliated Securities, Inc., J. Patrick Bohn & Co. and J. Patrick Bohn announced on the record their settlement and their agreement to the entry of an arbitration award. The copy of the executed Agreed Arbitration Award is hereby incorporated in this award and attached hereto as Exhibit A.

Pursuant to this agreement, the panel severed the issues resolved by the Agreed Arbitration Award and hearing continued on those issues relating to Respondent Stafford.

Respondent First Affiliated Securities, Inc. requested pursuant to Section 30 of the NASD Code of Arbitration Procedure that the panel direct the return of an adjournment fee previously paid by First Affiliated. Upon review, the panel determined that the motion would be denied and that the NASD shall retain the adjournment fee filed by Respondent First Affiliated.

Respondent Stafford did not file an executed submission agreement in this matter, but the panel finds that Stafford is and was an associated person within the meaning of Section 12 of the NASD Code of Arbitration Procedure. Therefore, the panel has determined that Respondent Joe Stafford is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

Respondent Joe Stafford did not file a Statement of Answer or appear at the hearing. Upon review of the NASD file, the representations and evidence produced by Preston's counsel and the representations of Respondents' counsel present at the hearing, the panel determined that Respondent Joe Stafford had been served with the Statement of Claim as required under Section 25 of the Code of Arbitration Procedure and with notice of the hearing as required under Section 26 of the NASD Code of Arbitration Procedure. Pursuant to these findings, the panel determined that the hearing would continue pursuant to Section 29 of the NASD Code of Arbitration Procedure.

At hearing, Claimant Preston requested a ruling upon her Motion to Bar Answer of Respondent Joe Stafford. Upon review of the Motion and the representations of counsel, the panel determined that the Motion was granted.

After the close of hearing on June 15, 1992, the panel requested the filing of post hearing submissions regarding the assessment of damages in this matter.

AWARD

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

1. Respondent Joe Stafford is liable for and shall pay to Claimant Gae C. Preston the sum of \$120,000.00;
2. In addition, Respondent Joe Stafford is liable for and shall pay to Claimant Gae C. Preston the sum of \$240,000.00 as punitive damages. In determining to award punitive damages to Claimant Gae C. Preston, the panel considered the authorities cited in Claimant's Amended Statement of Claim, as well as the arguments presented by Claimant, and determined that authority existed for an award of punitive damages in favor of Claimant Gae C. Preston;
3. Furthermore, Respondent Joe Stafford is liable for and shall pay to Claimant Gae C. Preston the sum of \$60,000.00 as attorneys' fees and \$3000.00 as expert witness fees. In determining to award attorneys' fees and expert witness fees to Claimant Gae C. Preston, the panel considered the authorities cited by Claimant in her Amended Statement of Claim, as well as Claimant's arguments, and determined that authority existed for an award of attorneys' fees and expert witness fees to Claimant Gae C. Preston;
4. Respondent Joe Stafford is liable for and shall pay to Claimant Gae C. Preston the sum of \$1,250.00 representing the reimbursement of the claim filing fee and hearing session deposit previously filed by Claimant Gae C. Preston; and
5. The parties are responsible for their own costs of, arbitration for any amount not specifically enumerated herein.

OTHER COSTS

Pursuant to the panel's determination, the NASD shall retain the adjournment fee of \$1,000.00 deposited by Respondent First Affiliated Securities, Inc.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) prehearing session x \$300.00 = \$300.00; One (1) hearing session x \$1,000.00 = \$1,000.00. Total forum fees due = \$1,300.00.

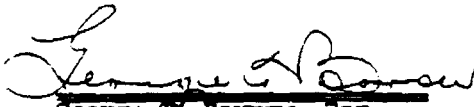
The National Association of Securities Dealers, Inc. ("NASD") shall retain

the \$250.00 claim filing fee and the \$1,000.00 hearing session deposit previously deposited by the Claimant Gae C. Preston. Respondent Joe Stafford is liable for and shall pay to the NASD the sum of \$300.00 as forum fees.

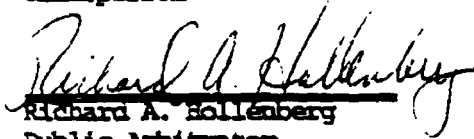
Fees are payable to the National Association of Securities Dealers, Inc.

CONCURRING ARBITRATORS' SIGNATURES

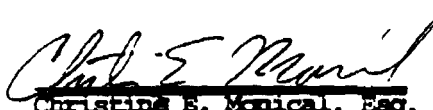
Dated:


George T. Barrow, Esq.
Public Arbitrator
Chairperson

November 25, 1992


Richard A. Hollenberg
Public Arbitrator

November 29, 1992


Christine E. Monical, Esq.
Industry Arbitrator

November 30, 1992

Date of Service on Parties: 12-1-92

Texas Deceptive Trade Practices Act. Preston sought actual and punitive damages and attorney's fees for this alleged unlawful conduct.

Bekhor Securities Corporation d/b/a First Affiliated Securities filed an amended answer and counter-claim, on or about April 21, 1992, denying the allegations in Preston's statement of claim, and asserting a counter-claim against Preston for an alleged debit in her account.

J. P. Bohn & Company and J. P. Bohn, individually, filed answers on or about August 1, 1991. J. P. Bohn, individually, denied the allegations in Preston's amended statement of claim. J. P. Bohn & Company alleged that it was a complete stranger to the matters in dispute and further denied the allegations in Preston's amended statement of claim.

Joe Stafford filed no answer or response.

AWARD

At the arbitration session on June 15, 1992, Preston and the settling Respondents announced on the record their settlement and their agreement to the entry of an arbitration award. The arbitration panel, having considered the announcement of the parties, the pleadings, and this agreed arbitration award, has decided to adopt this agreed arbitration award to be the full and final resolution of the issues submitted for determination as between Preston, Bekhor Securities Corporation d/b/a First Affiliated Securities, J.P. Bohn & Co. and J.P. Bohn, individually. The panel has severed these issues from the issues relating to Joe Stafford, which will be the subject of a separate arbitration decision based on evidence presented by Preston against Stafford at the arbitration session. As to the settling Respondents, the panel enters the following award:

1. Respondent Bekhor Securities Corporation d/b/a First Affiliated Securities is liable for and shall pay to Preston damages in the amount of \$170,000.00.
2. Respondents J. P. Bohn & Company and J. P. Bohn, individually, are jointly and severally liable for, and shall pay to Preston, \$2,000.00.
3. The above amounts include principle, interest, attorney's fees, cost and expenses.
4. Preston is not liable to Respondent Bekhor Securities Corporation d/b/a First Affiliated Securities on its counter-claim against Preston. Therefore, no award is given to Respondent Bekhor Securities Corporation d/b/a First Affiliated Securities on its counter-claims.
5. This award shall be final, non-appealable and immediately subject to execution and collection. The parties have expressly released and waived any rights to assert a motion or petition to vacate, a post-award judicial challenge to the determinations made herein, or otherwise to avoid the enforcement of this award.

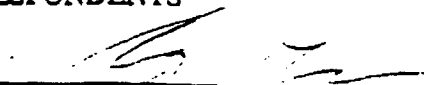
APPROVED:

CLAIMANT

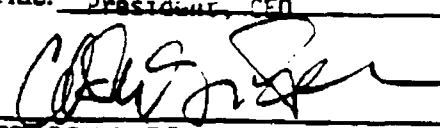

GAE/C. PRESTON


MARK K. GLASSER,
ATTORNEY FOR CLAIMANT

RESPONDENTS


BEKHOR SECURITIES CORPORATION d/b/a
FIRST AFFILIATED SECURITIES

By: Adolf Kohn
Title: President, CEO


CELSO M. GONZALEZ-FALLA,
ATTORNEY FOR FIRST AFFILIATED
SECURITIES


INTERNATIONAL BARTER INVESTMENT
GROUP, INC.

By: Jonathan E.S. Bekhor
Title: Chairman

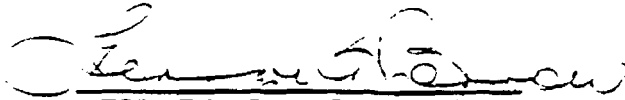
J. P. BOHN & COMPANY, INC.

By: _____
Title: _____

J. P. BOHN, Individually

KATHY D. PATRICK,
ATTORNEY FOR J. PATRICK BOHN & CO.
and J. PATRICK BOHN

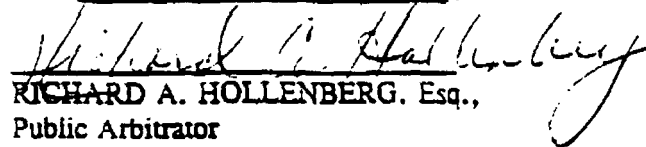
The undersigned, being the arbitrators selected to determine the above-captioned matter,
hereby enter the above Agreed Arbitration Award.



GEORGE T. BARROW, Esq.,

Chairperson, Public Arbitrator

Date: August 20, 1992



RICHARD A. HOLLENBERG, Esq.,

Public Arbitrator

Date: _____



CHRISTINE E. MONICAL.

Industry Arbitrator

Date: 8/21/92

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