

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ruth E. Davidson, ind/atty-in-fact
f/b/o Clyde and Margaret Creal

91-02592

Name of Respondents

Traub & Company, Inc.
Steven A. Mano
William R. VanDeman

REPRESENTATION

For Claimants: Mark E. Maddox, Esq. of Coons & Saint, Indianapolis, Indiana.

For Respondents: Scott E. Tarter, Esq. of Henderson, Dailly, Withrow & DeVoe, Indianapolis, Indiana.

CASE INFORMATION

Statement of Claim filed August 21, 1991.

Claimant's Submission Agreement signed on August 19, 1991.

Joint Statement of Answer filed by Respondents on October 9, 1991.

Respondent Steven Mano, William VanDeman, and Traub & Company, Inc.'s Submission Agreements signed on October 8, 1991.

HEARING INFORMATION

Hearing Date/Sessions: January 23, 1992 for two (2) sessions,
January 24, 1992 for two (2) sessions.

Hearing Location: Indianapolis, Indiana.

CASE SUMMARY

Claimant Ruth Davidson ("Davidson") alleged that she invested Claimants Clyde and Margaret Creal's ("the Creals") monies in the Franklin U.S. Government Securities Mutual Fund based on the recommendation of Respondent Steven Mano ("Mano") broker for Respondent Traub & Company, Inc. ("Traub") Davidson alleged that the Creals's monies which were in Certificate of Deposits were not achieving enough interest and her objective was to achieve

a higher interest rate in a low-risk investment that would yield an 8% return per year. Davidson alleged that she was later informed that the Creals's monies had not been invested in the Government Fund as she had believed, but in a high income junk bond fund, Franklin Age Fund.

Davidson further alleged that Respondent William Vandeman ("Vandeman") originally solicited and sold the securities and rendered investment advice to Davidson and was not registered with the Indiana Securities Division. Davidson alleged that the investment was unsuitable for the stated investment objective. Davidson alleged breach of fiduciary duty, material misrepresentation, suitability, and negligence for failure to supervise.

Respondents Traub & Company, Inc., Steven Meno, and William Vandeman ("Respondents") alleged that no specific recommendation was made to Davidson regarding her investment alternatives. Respondents alleged that Davidson decided to invest in the Age Fund to get a high rate of return for Clyde and Margaret Creal. Respondents further alleged that the Age Fund was a suitable investment under the circumstances. Respondents also alleged that Vandeman never represented to Davidson that he was a registered securities representative and at no time did he act in the capacity of a securities representative, render investment advice or make recommendations to Davidson.

RELIEF REQUESTED

Claimants requested lost principal as of October 3, 1990 in the sum of \$52,475.00, lost interest at 8% from October 3, 1990 through February 29, 1992 in the sum of \$5,948.00, attorney's fees and expenses in the sum of \$25,184.26, expert witness fees in the sum of \$500.00, NASD arbitration fees in the sum of \$950, plus punitive damages.

Respondents requested that the Claimants recover nothing by way of their Statement of Claim, costs of this action, and such other further relief the panel deems appropriate.

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.

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. The Respondents Traub & Company, Inc. and William Vandeman shall be and hereby are jointly and severally liable for and shall pay to the Claimants Clyde and Margaret Creal, and Ruth E. Davidson, individual and as attorney-in-fact for Clyde and Margaret Creal the amount of Eighteen Thousand Dollars and No Cents (\$18,000.00) which includes the request for actual damages, attorney's fees, expert witness fees, lost interest, and hearing

session fees;

2. The Claimant's claim against Respondent Steven Meno is denied and dismissed in its entirety;

3. The request for punitive damages is denied;

4. 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:

4 sessions X \$750 = \$3000 minus hearing session deposit of \$750 = net \$2250 due.

Forum fees Assessed Against: Respondents Traub & Company, Inc., and William VanDamen, jointly and severally.

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

By The Arbitration Panel:

Steve C. Bach
Steve C. Bach, Esq., Chairperson
Public Arbitrator

Dated:

6/24/92

Thomas E. Alsip
Public Arbitrator

Fred Bostelman
Industry Arbitrator

session fees;

2. The Claimant's claim against Respondent Steven Meno is denied and dismissed in its entirety;

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By The Arbitration Panel:

Dated:

Steve C. Bach, Esq., Chairperson
Public Arbitrator

Thomas E. Alsip
Thomas E. Alsip
Public Arbitrator

Fred Bostelman
Industry Arbitrator

June 25, 1992