

book

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Mary Jane Lynch

91-02821

Name of Respondent(s)

C. Dewey Elliott, III
Dominion Capital Corporation

REPRESENTATION

For Claimant: Claimant Mary Jane Lynch appeared pro se.

For Respondent: Respondent C. Dewey Elliott, III appeared pro se.

Respondent Dominion Capital Corporation was represented by
Douglas W. Powell of The Dominion Companies located in
Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: September 11, 1991.

Claimant's Submission Agreement signed on: September 16, 1991.

Joint Statement of Answer filed by Respondents C. Dewey Elliott, III and
Dominion Capital Corporation on: October 31, 1991.

Respondent C. Dewey Elliott's Submission Agreement signed on: October 25,
1991.

Respondent Dominion Capital Corporation's Submission Agreement signed by C.
Dewey Elliott, III, President, on: October 25, 1991.

HEARING INFORMATION

Pre-Hearing Conference: None held.

Hearing Date/Sessions: June 11, 1992 for one (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Mary Jane Lynch ("Lynch") alleged that Respondent C. Dewey Elliott

III ("Elliott"), while employed by or acting as an agent for Respondent Dominion Capital Corporation ("Dominion"), invested her IRA Rollover in a promissory note which was unsuitable given her express need for an investment that could be moved back into the company retirement plan if it was reorganized. Lynch specifically alleged as follows:

1. In January of 1990, Lynch was issued funds totaling \$42,986.56 after her company Retirement Plan was disbanded and funds distributed to all participants;
2. In February of 1990, Lynch met with Elliott explaining that she would possibly move her funds back into the retirement plan if it was reorganized. Elliott advised her on the direction to take with her IRA Rollover, and invested \$20,000.00 in a promissory note with Dominion;
3. On April 3, 1991, after Lynch's IRA Account had been moved to two different custodian companies, Lynch received a letter from Prime Guaranty Trust Company advising her that it could no longer serve as custodian of her IRA account;
4. Unable to reach Elliott, Lynch chose PaineWebber Incorporated to hold her IRA Rollover Account and wrote Dominion requesting that all funds in the IRA account be released to PaineWebber; and
5. PaineWebber accepted all funds released by Dominion except the promissory note which it refused, a situation Lynch was unaware could happen with the promissory note investment.

Respondents Elliott and Dominion denied the material allegations in the statement of claim, alleging that:

1. The Promissory Note ("Note") is issued by Dominion Agency, Inc. of which Elliott is an officer and director, not Dominion Capital Corporation, and the Note is held physically in trust at Providence Trust Company;
2. The two prior custodian companies referred to by Lynch were unaffiliated with Dominion Capital Corporation;
3. Elliott provided detailed assistance in providing alternative custodian companies for Claimant Mary Jane Lynch ("Lynch") when the other companies were unable to act as custodian;
4. Providence Trust Company is obligated to transfer the asset per Lynch's directions when it receives approval from the replacement Trustee to receive the asset;
5. PaineWebber as the receiving Trustee would not accept the Note as an asset in Lynch's IRA, which is neither the responsibility nor the fault of either Dominion Capital Corporation or Dominion Agency, Inc.;

6. The Note is in good form, interest payments are current, - 3 appropriate for the objectives stated by Lynch, and \$20,000.00 has been invested in an annuity with a ten-year maturity to insure the return of principal upon maturity;
7. These funds are not available to Dominion Agency, Inc. until maturity of the contract and Lynch's request would place an unfair financial hardship on Dominion Capital Corporation; and
8. Dominion Capital Corporation denies that there is any basis for rescission of the Note.

RELIEF REQUESTED

Claimant Mary Jane Lynch requested an award in the amount of the \$20,000.00, the principal amount of the Promissory Note plus accrued interest. At hearing, Lynch amended her request to include rescission.

Respondents C. Dewey Elliott, III and Dominion Capital Corporation requested the claim be dismissed and denied in its entirety.

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 original remains on file with the NASD.

AWARD

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

1. Rescission of the Principal Insured promissory Note between Dominion Agency Inc. and Claimant Mary Jane Lynch entered into on February 7, 1990 is hereby granted;
2. Accordingly, Respondents C. Dewey Elliott, III and Dominion Capital Corporation are jointly and severally liable for and shall pay to Claimant Mary Jane Lynch the sum of \$15,200.00 plus interest at the rate of 6% per annum beginning February 7, 1990 until the amount is paid;
3. The amount due represents the \$20,000.00 paid offset by the \$4,800.00 in interest on the Note at 12% that the Claimant Lynch has received for the past two years;
4. The parties shall each bear their own cost of arbitration, including attorney's fees, if any, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

One (1) session X \$300.00 hearing session deposit = \$300.00

The National Association of Securities Dealers, Inc. shall retain the filing fee of \$100.00 and the hearing session deposit of \$300.00 previously deposited by the Claimant Mary Jane Lynch.

Concurring Arbitrator's Signature

Michael E. McGown
Michael E. McGown, Esq.
Chairperson
Public Arbitrator

July 30, 1992
Date

Date of Service on Parties:

July 31, 1992