

N.A.S.D. ~~AWARD~~

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimants

DuWayne Mooers & Elsie Mooers

91-03041

Name of Respondents

Offerman & Company  
Delano Anderson

---

REPRESENTATION

For Claimants: Mark Briol, Esq. and Gregory Wilmes, Esq. of Briol & Wilmes, Minneapolis, Minnesota.

For Respondent Offerman & Company: Terrence J. Fleming, Esq. of Lindquist & Vennun, Minneapolis, Minnesota and Ann Exline Starr, Esq. of Offerman & Company, Minneapolis, Minnesota.

For Respondent Delano Anderson: Pro Se.

CASE INFORMATION

Statement of Claim filed: September 30, 1991.

Claimant's Submission Agreement signed on: September 18, 1991.

Statement of Answer filed by Respondent, Offerman & Company on: February 13, 1992.

HEARING INFORMATION

Pre-Hearing Conference: June 5, 1992 for one (1) session with Chairperson.

Hearing Dates/Sessions: June 8, 1992 for two (2) sessions,  
June 9, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants DuWayne Mooers and Elsie Mooers ("Mooers") alleged that Respondent Delano Anderson ("Anderson") agent of Respondent Offerman & Company ("Offerman") diverted the Mooerses funds to himself rather than invest their money in money markets and securities as the Mooers had believed. More specifically, Mooers alleged that they believed the money

they gave Anderson was being deposited in a money market account and also that he was purchasing two certificates of the Putnam Income Option II and Putnam High Income Government Securities. Mooers also alleged that Anderson never repaid a loan which was given to Anderson who claimed to be having financial problems. Mooers alleged that Offerman is liable for Anderson's conduct since he was employed by Offerman.

Respondent Offerman & Company generally denied the allegations set forth in the Statement of Claim. Offerman alleged that Anderson's actions in taking Mooers's money without making claimed investments were outside the scope of his authorized activities relating to his association with Offerman, and he had no actual or apparent authority from Offerman to undertake those actions. Offerman alleged that they should not be held liable.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$39,561.81; interest on all damages awarded, estimated to be \$12, 839.60; treble damages for violations of RICO, 18 U.S.C. Section 1961; treble damages for violation of Minn. Stat. Section 609.53; double damages for a violation of Minn. Stat. Section 332.51; costs, disbursements and expenses in the amount of \$5000 of arbitration; reasonable attorney's fees; and such other relief as the arbitrators shall deem just and equitable in the premises.

Respondent Offerman & Company requested that the Statement of Claim be dismissed with prejudice, and that they be granted their costs and disbursements, including assessments of all forum fees and any further relief as the panel may deem just and equitable.

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.

Respondent Delano Anderson did not file with the NASD a Submission Agreement or a Statement of Answer. The arbitrators dismissed Respondent Delano Anderson, without prejudice, as a party.

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 Offerman & Company shall be and hereby is liable for and shall pay to the Claimants compensatory damages in the amount of Thirty Five Thousand Five Hundred Sixty One Dollars and Eighty Eight Cents (\$35,561.88);
2. Respondent Offerman & Company shall be and hereby is liable for and

NASD ARBIT 91-03041  
PAGE 3 of 3

shall pay to the Claimants, interest as follows, pursuant to Minn. Stat. Section 334.01:

- a. Upon the sum of \$7500.00 since July 29, 1986,
- b. Upon the sum of \$20,000.00 since February 26, 1987,
- c. Upon the sum of \$8061.88 since December 2, 1988.

3. Respondent Offerman & Company shall be and hereby is liable for and shall pay to the Claimants Dwayne and Elsie Moores, and attorneys Mark Briol and Gregory Wilmes, attorney's fees in the amount of Seven Thousand Five Hundred Dollars ("\$7500"). The arbitrators awarded attorney's fees under the authority of Minnesota Statute.

4. The Claimant's claim for treble damages for violations of RICO, treble damages for violation of Minn. Stat. Sec. 609.53, and double damages for a violation of Minn. Stat. Sec. 332.51 are denied;

5. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for herein.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions X \$750 = \$3,000 minus hearing session deposit of \$750 = \$2250 due, plus 1 Pre-hearing conference session at \$300 = net \$2550 due.

Forum fees Assessed Against Claimants in the amount of \$2550.

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

By The Arbitration Panel:

DATED:

James K. Freeman, Esq., Chairperson  
Public Arbitrator

Allen E. Feltz, CPA  
Public Arbitrator

Emily B. Boote  
Emily B. Boote  
Industry Arbitrator

July 23, 1992

DATE ARBITRATED SERVED BY THE NASD: \_\_\_\_\_

NASD AWARD 91-03041  
PAGE 3 of 3

shall pay to the Claimants, interest as follows, pursuant to Minn. Stat. Section 334.01:

- a. Upon the sum of \$7500.00 since July 29, 1986,
- b. Upon the sum of \$20,000.00 since February 26, 1987,
- c. Upon the sum of \$8061.88 since December 2, 1988.

3. Respondent Offermum & Company shall be and hereby is liable for and shall pay to the Claimants DuWayne and Elaine Moores, and attorneys Mark Briol and Gregory Wilmes, attorney's fees in the amount of Seven Thousand Five Hundred Dollars ("\$7500"). The arbitrators awarded attorney's fees under the authority of Minnesota Statute.

4. The Claimant's claim for treble damages for violations of RICO, treble damages for violation of Minn. Stat. Sec. 609.53, and double damages for a violation of Minn. Stat. Sec. 332.51 are denied;

5. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for herein.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions X \$750 = \$3,000 minus hearing session deposit of \$750 = \$2250 due, plus 1 Pre-hearing conference session at \$300 = net \$2550 due.

Forum fees Assessed Against Claimants in the amount of \$2550.

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

By The Arbitration Panel:

Janice K. Frankman  
Janice K. Frankman, Esq., Chairperson  
Public Arbitrator

Allen E. Fontana, CPA  
Allen E. Fontana, CPA  
Public Arbitrator

Emily E. Rocco  
Emily E. Rocco  
Industry Arbitrator

DATE AWARD SERVED BY THE NASD: \_\_\_\_\_

shall pay to the Claimants, interest as follows, pursuant to Minn. Stat. Section 334.01:

- a. Upon the sum of \$7500.00 since July 29, 1986,
- b. Upon the sum of \$20,000.00 since February 26, 1987,
- c. Upon the sum of \$8061.88 since December 2, 1988.

3. Respondent Offerman & Company shall be and hereby is liable for and shall pay to the Claimants Duffayne and Elsie Mooers, and attorneys Mark Briol and Gregory Wilmas, attorney's fees in the amount of Seven Thousand Five Hundred Dollars ("\$7500"). The arbitrators awarded attorney's fees under the authority of Minnesota Statute.

4. The Claimant's claim for treble damages for violations of RICO, treble damages for violation of Minn. Stat. Sec. 609.53, and double damages for a violation of Minn. Stat. Sec. 332.51 are denied;

5. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions X \$750 = \$3,000 minus hearing session deposit of \$750 = \$2250 due, plus 1 Pre-hearing conference session at \$300 = net \$2550 due.

Forum fees Assessed Against Claimants in the amount of \$2550.

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

By The Arbitration Panel:

DATED:

Janice K. Frankman, Esq., Chairperson  
Public Arbitrator

*Allen E. Fontana*  
Allen E. Fontana, CPA  
Public Arbitrator

\_\_\_\_\_

*7/27/92*  
\_\_\_\_\_

Emily B. Boote  
Industry Arbitrator

\_\_\_\_\_

DATE AWARD SERVED BY THE NASD: \_\_\_\_\_