

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Carol J. McCabe

91-03372

Name of Respondents

Dominick & Dominick Incorporated
Michael Beck

REPRESENTATION

For Claimant Carol J. McCabe ("Claimant"): William E. Donnelly, Esq. of the law firm of Muldoon, Murphy & Faucette

For Respondent Dominick & Dominick, Inc. ("Dominick"): Todd B. Sollis, Esq. of the law firm of Kavanagh Peters Powell & Osnata

Respondent Michael Beck ("Beck") did not attend the hearings nor was he represented by council.

CASE INFORMATION

Statement of Claim filed: October 25, 1991

Claimant's Submission Agreement signed on: October 18, 1991

Statement of Answer; Cross Claim and Third Party Claim filed by Dominick on: December 26, 1991

Statement of Answer to Cross Claim of Beck filed February 18, 1991

Dominick's Submission Agreement signed on: November 18, 1991

Statement of Answer and Cross Claim by filed by Beck on: January 9, 1992

Beck's Statement of Answer to Cross Claim of Dominick filed on: February 13, 1992

Beck's Submission Agreement signed on: January 3, 1992

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HEARING INFORMATION

Pre-Hearing Conference: February 9, 1993 - one session

Hearing Dates/Sessions: February 16, 1993 - two sessions
February 17, 1993 - two sessions

Hearing Location: NASD Executive Office- Washington, D.C.

CASE SUMMARY

Claimant alleged, among other things, that Respondents placed her in an unsuitable investment named North Amber Limited Partnership VI ("North Amber"), a Maryland real estate limited partnership. Claimant alleged that Beck had apparent authority to sell North Amber. Claimant alleged that Respondent made material misrepresentations regarding North Amber to induce the Claimant to making the purchases. Claimant alleged that Beck failed to disclose the risks attendant to this investment. Claimant alleged that she did not meet the requirements of the financial criteria to be qualified to make this investment and Beck failed to disclose this to Claimant. Claimant alleged that her signature was forged on the subscription agreement. Claimant alleged that Dominick, a controlling person and principle of Beck is liable for the conduct of Beck under the doctrine of respondeat superior. Claimant alleged that Respondents are liable for violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Claimant alleged that Respondents also committed common law fraud. Violated Art. III, Section 2 of the NASD Rules of Fair Practice and that Dominick failed to properly supervise the actions Beck.

Respondent Dominick maintained that Claimant was a sophisticated investor with knowledge of Real Estate Limited Partnerships such as North Amber. Dominick maintained that Claimant knew that Beck had forged her signature on the subscription agreement and on the promissory note. Dominick maintained that Claimant, an attorney with over 15 years of experience, was aware that she may not have qualified for the investment as a accredited investor. Dominick maintained that when Beck advised Claimant that she would need to qualify as an accredited investor, she was aware of the risks associated with the North Amber investment. Dominick maintained that Claimant discovered Beck's scam. Respondents maintained that Claimant's knowing acquiescent in Beck's fraud, amounting to a ratification of his actions. Dominick maintained that Claimant had a duty to speak and that her failure to bring Beck's fraud to Dominick's attention deprived Dominick from the opportunity to timely reverse the transaction, protect its rights and root out Beck and his co-conspirators before they wreaked financial devastation on

innocent Dominick investors. Dominick maintained that even after Claimant became aware of the forgeries she made an additional payment for the purchase of North Amber. Dominick asserted that, if Beck wrongfully recommended to Claimant North Amber and/or forged her name to the subscription agreement and the promissory note, then Beck did so in express violation of Dominick's internal rules and regulations and the McShea & Company, Inc. knowingly aided and abetted Beck's scheme by means of financial and other inducements. Dominick asserted that Beck profited from his wrongdoing and that he is therefore liable to Claimant. Dominick maintained that if an adverse ruling on this claim should ensue, then Dominick is entitled to indemnification from Beck on common law grounds.

Beck maintained that McCabe was a sophisticated investor whom Beck had apprised of the nature of the risks and terms of the North Amber investment. Beck asserted that if the Panel determines that, despite Claimant's sophistication and awareness of the risks of this investment, that Claimant is entitled to a recovery, any liability for paying the recovery should fall exclusively upon Dominick due to its lack of appropriate and adequate procedures and internal controls as well as its failure to supervise.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$23,557.47 plus interest, together with all arbitration fees and costs paid by the Claimant, reasonable attorneys fees and punitive damages in the amount of \$25,000.

Dominick requested that the Panel determine that Dominick is not liable to the Claimant for any relief herein and, in the event that any damages should be awarded against it, that Dominick be awarded full recovery of such damages on its cross claim against Beck.

Beck requested that Claimant's claim be denied in its entirety and, in the event that any damages should be awarded against Beck, that he be awarded full recovery of such damages on the cross claim against Dominick. In addition, Beck requested reasonable attorney's fees and costs incurred in defending Claimant's meritless claim.

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.

That although Beck did not attend the hearings in this arbitration, the Panel decided that Beck was properly notified of the hearings, that pursuant to the by laws of the NASD, and the signed submission agreement the Panel had jurisdiction. Therefore, Beck is bound by all rulings and determinations of this panel.

AWARD

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

1. That Dominick and Beck are jointly and severally liable to the claimant and shall pay to the Claimant the sum of \$21,667.46; exclusive of interest.
2. That Claimant's claims for interest, attorney's fees, costs and punitive damages are denied in their entirety.
3. That all requests for cross claim are denied.
4. That each party shall bear there respective costs, other than those specifically provided for herein.

FORUM FEES

Pursuant to Section 43(c) and 44(c) of the Code of Arbitration Procedure (the "Code"), the following Forum Fee(s) are assessed.

1 pre hearing conference session (with the Chairman) X \$300 = \$300

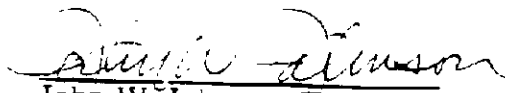
4 hearing sessions X \$750 per session = \$3,000

Pursuant to Sections 43(c) and 44(c) of the Code, the NASD shall retain Claimants hearing session deposit of \$400, Beck's hearing session deposit of \$600 and Dominick's hearing session deposits of \$1500, so that the remaining hearing session fees are \$800.

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The remaining forum fees in the amount of \$800 are assessed against Dominick.
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name


John W. Johnson, Esq.

Public/Industry



Date of Decision: 2/26/93

NASD Date of Decision: March 5, 1993

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The remaining forum fees in the amount of \$800 are assessed against Dominick.
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name

Public/Industry

Gerald P. LeNoir

Date of Decision: March 5, 1993

NASD Date of Decision: March 5, 1993

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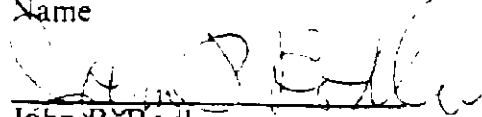
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The remaining forum fees in the amount of \$800 are assessed against Dominick.

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

Concurring Arbitrator's Signature
Name

Public/Industry


John P. Rodler

Date of Decision: 2/21/93

NASD Date of Decision: March 5, 1993