

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Catherine M. Smith

NASD Arbitration
No. 91-03457

Name of Respondents

M. Ted Birr, III
Jeanette Anne Best

REPRESENTATION

For Claimant: Richard Sacks - Investors Recovery Service - Novato, Ca.

For Respondent: Robert J. Stumpf, Esq. -Bronson, Bronson & McKinnon, San Francisco, Ca.

CASE INFORMATION

Statement of Claim filed: November 4, 1991

Claimant's Submission Agreement signed on: October 11, 1991

Statement of Answer filed by Respondent, H. Ted Birr, III on: January 21, 1992

Statement of Answer filed by Respondent, Jeanette Best on: December 31, 1991

Respondent, Jeanette Best's Submission Agreement signed on: December 10, 1991

Respondent, H. Ted Birr, III's Submission Agreement signed on: January 14, 1992

HEARING INFORMATION

Pre-Hearing Conference: October 26, 1992 - One Session

Hearing Date/Sessions: November 9, 1992 - One Session

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant, Catherine M. Smith, alleged that during 1982 and 1983, Respondent, Jeanette Best (Best), while employed by Birr Wilson & Co. (Birr), sold Smith unsuitable investments in limited partnerships.

Best and Birr moved to dismiss the claim on the basis of Section 15 of the NASD Code of Arbitration Procedure, the rule that specifies that claims are eligible for arbitration only if they are asserted within six years after the relevant event or occurrence. The arbitration panel heard arguments regarding the application of the six-year rule to this claim by conference telephone call on Monday, October 26, 1992, and received written submissions on this issue on Friday, October 30, 1992. The panel convened by conference telephone call on Monday, November 2, 1992 and concluded that an evidentiary hearing should proceed but that, given the passage of over eight years from the date of the last investment to the filing of the claim, the claimant had to demonstrate why the six-year period should not be deemed to have expired before the claim was filed.

The panel conducted a hearing on Monday, November 9, 1992. Smith and her representative produced no evidence to the effect that Best and Birr actively concealed the value or status of Smith's investments after Smith made the investments. Nor did Smith or her representative direct the panel to any other persuasive evidence that would support the conclusion that a relevant "event or occurrence" had occurred within six years of the claim date.

RELIEF REQUESTED

Claimant requested an award of \$79,334.00 plus reasonable recovery fees of \$15,000.00.

Respondents requested dismissal of the claim 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(s) remain on file with the NASD.

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. Each and every claim of Claimant, Catherine M. Smith, against Respondent, Jeanette Anne Best, is dismissed.
2. Each and every claim of Claimant, Catherine M. Smith, against Respondent, H. Ted Birr, III, is dismissed.
3. The parties shall each bear their respective costs and fees, including attorney/recovery fees.

FORUM FEES

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

Respondent, Jeanette Anne Best, is solely assessed forum fees in the amount of \$800.00, representing a fee of \$300.00 for a pre-hearing session and a fee of \$500.00 for one full hearing session.

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

ARBITRATORS

Public/Industry
Public Chairperson
Public Panelist
Industry Panelist

Roy Panelli _____

Concurring Arbitrators' Signatures

Roy Panelli

Date of Decision: _____

Served Nov 24, 1992