

**N.A.S.D. ANNED**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

**John E. Hildebrand  
and Norma L. Hildebrand**

**91-04050**

**Name of Respondent**

**David R. Steinberg  
and Boettcher & Company, Inc.**

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**REPRESENTATION**

Claimants, John and Norma Hildebrand were represented by George R. Brown, Esq. of Linden, Chapa & Fields, Tucson, Arizona.

Respondents, David R. Steinberg and Boettcher & Company were represented by William F. Nelson, Esq. of Robinson, Waters, O'Dorisio and Rapson, Denver, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on December 20, 1991.

Claimants, John E. and Norma L. Hildebrand's Submission Agreements were signed on December 9, 1991.

Respondent, Boettcher & Company's Submission Agreement was signed on March 19, 1992 by Janet L. Reali.

Respondent, David R. Steinberg's Submission Agreement was signed on May 5, 1992.

A Joint Statement of Answer was filed with the NASD by Respondents Boettcher & Company and David R. Steinberg on March 31, 1992.

**HEARING INFORMATION**

The hearing date was October 26, 1992 and the hearing lasted for two (2) sessions.

The hearing location was Scottsdale, Arizona.

CASE SUMMARY

Claimants, John E. and Norma L. Hildebrand ("Claimants") alleged that Respondents Boettcher & Company ("Boettcher") and David R. Steinberg ("Steinberg"), as Vice-President and account executive of Boettcher's Tucson, Arizona branch, breached their implied covenant of good faith and fair dealing, made negligent misrepresentations to Claimants and acted negligently in the handling of Claimants' account. These allegations arose out of Claimants' attempt to defer and avoid imposition of taxes by "rolling over" a lump sum of monies into a qualified Individual Retirement Account ("IRA").

Claimants alleged that throughout Claimant, John E. Hildebrand's medical career, he made contributions to the American Medical Association Members Retirement Plan ("AMA Plan"). When Dr. Hildebrand retired, he received a lump sum distribution from the AMA Plan. Claimants alleged they were advised that they could defer imposition of taxes by accomplishing a "roll-over" into an IRA within sixty days of receipt of the lump-sum distribution monies. Claimants contended that they contacted Boettcher and Steinberg because they had advertised their expertise in assisting clients with pension plan distribution investments. According to Claimants, upon their completion of the paperwork required in order to accomplish the "roll-over", and after meeting with Steinberg, in late 1986, they believed that he had "rolled-over" the AMA Plan monies into a qualified IRA plan, to defer the imposition of both federal and state taxes. Claimants further alleged that in 1990, the Internal Revenue Service ("IRS") examined their 1986 and 1987 tax returns. As a result of this examination, Claimants asserted that they were informed that Boettcher and Steinberg had not properly effected the "roll-over" of monies so Claimants owed back taxes to the IRS and the Arizona Department of Revenue.

In their Joint Statement of Answer, Boettcher and Steinberg denied the claims contained in the Statement of Claim. Specifically, Boettcher and Steinberg alleged that they properly handled Claimants' account. Boettcher and Steinberg asserted that when Steinberg met with Claimants, there was no mention of rolling over any funds into an IRA. According to the answer, Steinberg was told that the funds coming into their account were to be invested for long term tax free growth and tax free income. Boettcher and Steinberg contended that a joint account was established on behalf of the Claimants and in connection with this account, Claimants received monthly and annual account statements. Boettcher and Steinberg argued that each of these documents clearly reflected the fact that Claimants' account was a joint account and not an IRA rollover. Boettcher and Steinberg further alleged that at no time did Claimants complain to Steinberg that this account was established in error or that either Boettcher or Steinberg failed to follow their instructions.

Boettcher and Steinberg asserted the following affirmative defenses:

1. Claimants failed to state a claim upon which relief can be granted;
2. The claims are barred by the doctrines of estoppel, waiver, acquiescence and ratification;
3. The Claimants' damages, if any, were caused by factors over which Boettcher and Steinberg had neither responsibility nor control;
4. The claims are barred by the applicable statutes of limitation;
5. Claimants have failed to mitigate their damages, if any;
6. Claimants' reliance on the alleged misrepresentations was not reasonable;
7. Claimants' claims are barred by their own negligence which exceeded any alleged negligence of the Boettcher and Steinberg; and
8. Claimants' damages, if any, were not proximately caused by any act or omission of Boettcher and Steinberg.

RELIEF REQUESTED

Claimants requested an award of compensatory and consequential damages, attorney's fees and costs and such other and further relief as the Arbitration Panel deemed just and appropriate.

Boettcher and Steinberg requested that the Statement of Claim be dismissed in its entirety and that Claimants take nothing by their Statement of 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.

The parties agreed that they would file written post-hearing briefs in lieu of oral closing argument. The briefs were filed directly with the arbitrators and the panel then convened and made a decision following receipt of the briefs.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and parties' post-hearing submissions, the

undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Boettcher and Steinberg are jointly and severally liable for and shall pay to Claimants, the sum of Thirty three thousand two hundred dollars and no cents (\$33,200.00); and,
2. The parties are to each pay their respective costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable claim filing fee and the hearing session deposit of \$750.00, which sums were previously deposited with the NASD by Claimants. Respondent, Boettcher is assessed and shall pay to the NASD additional Forum Fees in the amount of \$750.00 and Respondents, Boettcher and Steinberg are jointly and severally responsible to directly reimburse Claimants in the amount of the total deposits made with the NASD by Claimants to initiate this proceeding. Forum Fees were calculated at the rate of \$750.00 per hearing session.

Additional Forum Fees assessed to the parties are payable to the NASD.

**Signatures of Concurring Arbitrators:**

/S/ Thomas F. Tobin  
Thomas F. Tobin, Esq.  
Public Arbitrator  
Chairperson

November 28, 1992  
Dated

/S/ Howard W. Shannon  
Howard W. Shannon  
Panelist  
Public Arbitrator

November 30, 1992  
Dated

/S/ James Sullivan  
James Sullivan  
Panelist  
Industry Arbitrator

November 27, 1992  
Dated

Date Award Served by the NASD: December 7, 1992