

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John Kambeitz

92-00284

Name of Respondent

Dougherty, Dawkins, Strand & Yost, Incorporated

REPRESENTATION

For Claimant: Bruce Pearson, of Fargo, North Dakota.

For Respondent: Frank Taylor, Esq. of Popham & Baik,
Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: December 30, 1991. Claimant's
Submission Agreement signed on: January 16, 1992.

Statement of Answer filed by Respondent on: February 21, 1992.
Respondent's Submission Agreement signed on: February 20, 1992.

Respondent's Motion to Dismiss and Supplemental Memorandum in
Support of its Motion to Dismiss filed on: September 16, 1992.
Claimant's Response to the Motion To Dismiss filed on: October
14, 1992. Respondent's Statement with respect to Statutes of
Limitations issues filed on: November 17, 1992.

HEARING INFORMATION

Telephonic pre-hearing conference: November 10, 1992 for one (1)
session with the arbitrator, Claimant's representative, and
Respondent's attorney.

Hearing Dates/Sessions: none

Hearing Location: scheduled for Minneapolis, Minnesota.

CASE SUMMARY

Claimant, John Kambeitz, ("Claimant") alleged misrepresentation and negligence on the part of Respondent, Daugherty, Dawkins, Strand & Yost, Incorporated ("Respondent"). According to Claimant, Respondent solicited Claimant to purchase Tax Free MDA bonds ("bonds"). Respondent was the underwriter of these bonds, and First Trust Company of North Dakota ("First Trust") was the trustee. Claimant's allegations arise out of a project involving a building located in Fargo, North Dakota, known as the Black Building. The bonds were secured by a first mortgage and security interest in this project and assignment and leases and rents from the project and a reserve fund. Claimant alleged that Respondent, as the underwriter of this project, was paid a fee of \$137,500 plus an additional \$25,000 which was not disclosed in the prospectus. Also, Claimant maintained that the Respondent failed to disclose in the "Use of Proceeds" that Mr. Jordahl; ("Jordahl"), the developer, was taking a developer's fee of \$164,000. Claimant stated that the project's general partner, Black Building Associates, which was comprised of Richard B. Jordahl and Valley Heritage Development Company, defaulted on the bond obligations. Claimant insisted that because no sinking fund was established to pay off the bonds, the bondholder's only remedy was to take title to the building. Claimant alleged that when First Trust contacted an asbestos and laboratory services firm, their survey disclosed that the total cost of removal of all identifiable hazardous materials would be an estimated \$4,324,130.00.

Additionally, Claimant asserted that no due diligence was performed on the actual price of the property and Jordahl was aware of the asbestos and other environmental hazards throughout the building. Lastly, Claimant alleged that the due diligence performed by Respondent was "sketchy at best."

In its Response to the Statement of Claim, Respondent denied that it is obligated or liable in any way to Claimant and alleged that it was in full compliance with applicable law, rules, and regulations. Respondent also denied that it violated any rules, regulation, law, or statute. Specifically, Respondents alleged that Claimant's claims were not stated with the particularity required by the rules of the National Association of Securities Dealers, Inc. Also, Respondent maintained that if Claimant alleged that Respondent violated the Securities Exchange Act of 1934 and the Securities Act of 1933, these claims are barred by the applicable statutes of limitations.

Respondent, in its Motion To Dismiss, alleged that pursuant to Section 16 and Section 32 of the Code of Arbitration Procedure, the Statement of Claim should be dismissed. Respondent alleged that Claimant had failed to state his claim with particularity, and had not addressed statute of limitations problems which rendered most of Claimant's claims moot. Respondent further alleged that Claimant had failed to provide information regarding (1) any statements by Respondent that could possibly be false or misleading, or (2) why he believed any such statement constituted fraud. Respondent also alleged that if Claimant had alleged federal securities law, Minnesota securities law, North Dakota Securities law, or breach of contract, his claims were barred by applicable statute of limitations.

In Respondent's Supplemental Memorandum in Support of its Motion To Dismiss, Respondent also alleged that Claimant, in addition to failing to state a competent claim, the claimant and his representative repeatedly refused to comply with Respondent's discovery requests, thus causing Respondent unreasonable delay and hardship in preparing its defense.

In its Answer to the Motion To Dismiss, Claimant requested that the panel deny the Motion To Dismiss. Claimant alleged that the claim stated with clarity that the allegations against Respondents were fraud, misrepresentation, and omission of fact. Claimant further alleged that Respondent had misrepresented the property in their offering and appraisal, that Respondent did not disclose to investors that the developer, prior to his offering, had seven real estate partnerships in default, and that Respondents misrepresented the actual purchase price of the building, and that Respondents failed to disclose that the building was full of asbestos, in its prospectus. Claimant further alleged that he filed the claim in a timely manner within one year of discovery of the violation pursuant to N. D. Century Code 10-04-17.

RELIEF REQUESTED

Claimant requested an award of his principal investment of \$10,000 plus interest and costs, including attorney's fees.

Respondent requested that Claimant state his claims with more particularity, that the hearing be held in Minneapolis and moved for the dismissal of the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Dougherty, Dawkins, Strand & Yost, Inc. filed a Motion To Dismiss the claim and Claimant, John Kambeitz, filed an Answer to the motion. After reviewing the Statement of Claim, the Answer to the claim, the Motion To Dismiss, the Answer to the Motion To Dismiss, and hearing oral argument on the motion through a telephonic pre-hearing conference, the presiding arbitrator decided that the claim should be dismissed pursuant to Section 16 of the Code of Arbitration Procedure which states,

"at any time during the course of an arbitration, the arbitrators may either upon their own initiative or at the request of a party dismiss the proceeding and refer the parties to the remedies provided by applicable law."

AWARD

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

1. The Statement of Claim is dismissed pursuant to Section 16 of the Code of Arbitration Procedure (See Other Issues above);
2. Other than forum fees which are set forth below, each of the parties shall bear their own costs and expenses incurred, including attorney's fees.

FORUM FEES

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

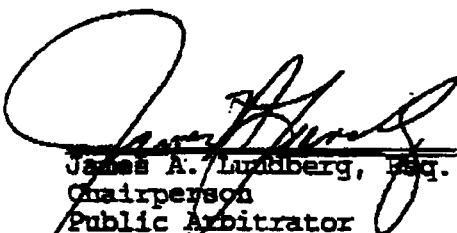
1 pre-hearing conference session X \$200 = \$200 minus hearing session deposit of \$500.

NASD AWARD 92-00284
Page 5 of 5

The NASD shall retain the non-refundable filing fee in the amount of \$75 and \$200 of the hearing session deposit to cover the cost of the pre-hearing conference session. The NASD shall refund to the Claimant, the amount of \$225 for overpayment of the hearing session deposit.

By The Arbitration Panel:

Dated: 12/24/1992



James A. Lundberg, Esq.
Chairperson
Public Arbitrator

Date Award Served By The NASD: 12/31/92