

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Harriet Rogoza Newman
1987 Revocable Trust

No. 92-00498

Name of Respondents

Richard M. Ryan
Robert W. Baird & Co. Incorporated

REPRESENTATION OF PARTIES

For Claimant: Herbert S. Bratt, Esq. of Curchill, Duback & Smith.

For Respondents: Deborah J. Fabritz, Esq., of Robert W. Baird & Co., Inc., Milwaukee, Wisconsin.

CASE INFORMATION

Statement of Claim filed: February 10, 1992.

Claimant's Submission Agreement signed on: February 6, 1992.

Joint Statement of Answer and Motion for Summary Judgement or Judgement on the Pleadings filed by Respondents, Richard M. Ryan and Robert W. Baird & Co. Incorporated on: March 9, 1992.

Respondent Richard M. Ryan's Submission Agreement signed on: March 5, 1992.

Respondent Robert W. Baird & Co. Incorporated's Submission Agreement signed on: March 5, 1992.

HEARING INFORMATION

Hearing date: May 15, 1992. One (1) session.

Hearing Location: Milwaukee, Wisconsin.

CASE SUMMARY

Claimant, Harriet Rogoza Newman 1987 Revocable Trust ("Claimant") alleged misrepresentations on the part of respondents Richard M. Ryan and Robert W. Baird & Co. Incorporated ("Respondents") relating to an investment in Florida Housing Financial Agency bonds (the "Bonds") which were purchased for its account in April of 1988. Claimant alleged that the Bonds had been insured by Mutual Benefit Life Insurance Company ("MBLI"), and as such, the Bonds safety was consistent with its investment policies. Claimant further alleged that by reason of MBLI's financial instability, it had been taken over by the State of New Jersey, and the Bonds sustained a severe diminution in value. Claimant further alleged that even after the Bonds had lost value, Respondents continued to report and represent to Claimant, in writing, that the Bond was at all times worth its face value, and that it had not suffered a market loss. Lastly, Claimant alleged that it was a number of months later that it had discovered the loss of value, and that when it had caused the Bonds to be sold in October of 1991, Claimant sustained a loss of \$9,346.50.

In their Statement of Answer, Respondents denied each and every material allegation contained in the Statement of Claim. In addition, Respondents asserted the following affirmative defenses:

1. The alleged conduct of the Respondents had not been the cause in fact or proximate cause of the loss alleged by Claimant. Claimant's loss had been proximately caused by the acts or omissions of third-parties (MBLI and the State of New Jersey).
2. Claimant fails to state facts sufficient to constitute a cause of action or to entitle Claimant to any relief.
3. Claimant understood the risks of loss in the investments made in her account and with the knowledge of such risks, voluntarily directed and authorized the investments made in her account. By reason of her conduct, Claimant willingly assumed the risks of loss attendant to the investments made by her and is barred from commencing or prosecuting an action thereon.
4. No fiduciary or discretionary relationship existed between Claimant and either of the Respondents.
5. Respondents exercised reasonable care and did not know (and could not have known) that the Bonds would experience a technical default.
6. Respondents did not guarantee Claimant against the possibility of a bond default or any other risk of loss and in fact would be prohibited from doing so under NYSE Rule 352.

RELIEF REQUESTED

Claimant requested an Award against the Respondents in the amount of \$9,346.50 together with its costs and expenses in this matter.

Respondents requested that Claimant's Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

On March 9, 1992, Respondents filed their Answer which contained a Motion for Summary Judgement or Judgement on the Pleadings. The Director of Arbitration refused to rule on the merits of the Motion for Summary Judgement, and left the decision for the arbitration panel. The Director of Arbitration denied the Request for Judgement on the Pleadings and ordered the case to hearing under Section 13 (f) of the Code of Arbitration Procedure per the request of the Claimant in its Statement of Claim.

On May 15, 1992, Respondents made a Motion for Dismissal/directed Verdict at the close of Claimant's case. After hearing argument from the parties, and deliberation, the undersigned arbitrator took the Motion under advisement.

The parties have agreed that the Award in this matter may be executed by a counterpart copy 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 remains on file with the NASD.

AWARD

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

1. Claimant, Harriet Rogoza Newman 1987 Revocable Trust's claims against respondents Robert W. Baird & Co. Incorporated and Richard M. Ryan are hereby denied and dismissed with prejudice.
2. Each party shall pay its own costs of this arbitration, including attorneys' fees.

FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

One (1) hearing session X \$200.00 = \$200.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$75.00, and shall retain the hearing session deposit in the amount of \$200.00 previously paid to the NASD by the Claimant.

The NASD shall refund to the Claimant the excess hearing session deposit it had previously paid to the NASD in the amount of \$525.00.

Dated:

June 19, 1992

/s/Mark E. Sanders

Mark E. Sanders
Presiding Chair