

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :

Donna J. King :

Claimant :

vs. :

McDonald & Co. Securities, Inc. :

Peter G. Panis :

Respondents :

CASE #92-00730  
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 3, 1992, Claimant, Donna J. King who appeared Pro Se, alleged that in July 1987 Respondent, McDonald & Co. Securities, Inc. solicited her to purchase 1,000 shares of Pickett Suite Hotel, Master Limited Partnership at \$10.00 per share by promising a guaranteed high return for a short period of time, at which time, Claimant was on "Portfolio Appraisal", whereby she was advised that Respondent, McDonald & Co. Securities, Inc. would review her holdings on a regular basis, therefore, Claimant would be advised when to get out of this investment. Claimant further alleged that Respondent, Peter G. Panis, account executive with Respondent, McDonald & Co. Securities, Inc., later contacted her to advise her that he had taken over servicing her portfolio. Claimant contended that contrary to the Portfolio Appraisal, Respondents failed to advise her when to get out of this investment and she lost her investment. Claimant further contended that Respondent, Peter G. Panis' negligence in handling her account and Respondent's McDonald & Co. Securities, Inc. failure to supervise, in addition to the false sense of security with the Portfolio Appraisal, caused her to lose her total investment.

Respondents, McDonald & Co. Securities, Inc. and Peter G. Panis, by and through their in-house counsel, Henry V. Kerr, Esq., maintained that on July 15, 1987, on the offering date, Claimant, Donna J. King purchased Pickett Suite securities and until such time as a sale has been effected, Claimant can have no profit or loss with respect to a securities transaction. Respondents further maintained that Claimant was supplied with a copy of the prospectus with respect to the Pickett Suite underwriting and the prospectus clearly sets forth the suitability standards, in addition to the

risk factors. Respondent contended that if Claimant was an unsuitable client for such security or deemed the risk factors contrary to her best interests, she had the ability to rescind the transaction upon receipt of the prospectus. Respondents further contended that assuming Claimant still holds her securities, she has received substantial cash distributions through the date of the first default and has failed to mitigate her damages. Respondents asserted that if there was any impropriety in the sale to Claimant, which Respondents deny, Claimant is entitled to no more than \$3.42 per share for damages. Respondents further asserted that Claimant's claim is barred by the statute of limitations, as Claimant purchased the security in 1987, she is not within the three year bar. Respondents argued that Respondent, Peter G. Panis did not sell the security to Claimant and no transaction by Respondent, Peter G. Panis is the subject of any claim herein, therefore, the claim should be dismissed against Respondent, Peter G. Panis. Respondents further argued that Claimant cannot transfer her responsibilities as a purchase in a nondiscretionary account to Respondents McDonald & Co. Securities, Inc. and Peter G. Panis.

#### RELIEF REQUESTED

Claimant, Donna J. King requested \$10,000.00 in actual damages.

Respondents, McDonald & Co. Securities, Inc. and Peter G. Panis requested the claim be denied.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph W. Grossner, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 26, 1992 and by the Respondents on March 27, 1992.

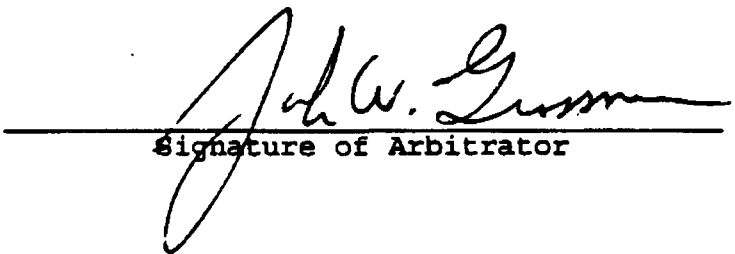
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent, McDonald & Co. Securities, Inc. is liable and shall pay to the Claimant, Donna J. King the sum of \$1,750.00 in damages.
2. The claim of Claimant, Donna J. King against Respondent, Peter G. Panis is dismissed.

3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Donna J. King shall be retained by the NASD, Inc. Respondent, McDonald & Co. Securities, Inc. is liable and shall pay to the Claimant the sum of \$150.00 as reimbursement.

AFFIRMATION

I, JOSEPH W. GROSSNER, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION: ---  
AUG 04 1992