

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Bernard Halper and Barbara Halper

92-00864

Name of Respondents

Dain Bosworth, Inc. and  
Elmer Schindel

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REPRESENTATION OF PARTIES

For Claimants: Ted S. Meikle, Esq. of Fredrikson & Byron,  
Minneapolis, Minnesota.

For Respondents: James B. Lynch, Esq. of Dorsey & Whitney,  
Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: March 12, 1992.

Claimants' Submission Agreement signed on: February 28, 1992.

Joint Statement of Answer filed by Respondents on: June 19,  
1992.

Respondents's Submission Agreements signed on: June 12, 1992.

HEARING INFORMATION

Hearing dates/sessions: November 11, 1992 for two (2) sessions,  
November 12, 1992 for one (1) session.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants Bernard Halper and Barbara Halper ( "the Halpers") alleged that Respondent Dain Bosworth ("Dain") through its representative, Respondent Elmer Schindel ("Schindel") invested in securities which were unsuitable for the Halpers conservative investment objective, were negligent, breached fiduciary duties, violated the Minnesota Consumer Fraud Act, violated the Arizona Securities Act, committed common law fraud, and violated the doctrine of respondeat superior.

The Halpers more specifically alleged that Schindel recommended that they purchase annuities from The Midwest Life Insurance Company with their retirement money. The Schindels alleged that these annuities were represented as being very safe investments that were suitable for the retirement needs of the Halpers. The Halpers alleged that Schindel convinced them to redeem the annuity and to purchase a mutual fund called Sentry. The Halpers alleged that they lost nearly \$60,000.00 in the Sentry fund and also found out that the annuities which they had previously purchased were not as safe and secure as expected.

Dain and Schindel alleged that the Statement of Claim fails to state a claim upon which relief may be granted, that the Schindels have failed to show causation, and asserted the Statute of Limitations as a defense to the action.

Schindel and Dain alleged that they made recommendations based on the Halpers investment objectives and market conditions at the time. Schindel and Dain alleged that the two annuities which the Halpers complained of, Midwest Life Insurance Company and Sentry Life Insurance Company, reflected conservative and sound investments when made. Schindel and Dain also alleged that the annuities were made only after the Halpers understood and agreed to the specific terms and general nature of the purchase. The Respondents further alleged that the losses complained of were caused by the stock market crash or by problems at Midwest that were not known to the Respondents or to the public.

#### RELIEF REQUESTED

Claimants requested that the panel enter an Award in their favor for an amount of not less than \$436,718.13, plus interest, costs and reasonable attorney's fees. The amount of damages requested was later amended to \$304,839.78.

Respondents requested that the panel deny the claims of Bernard Halper and Barbara Halper in their entirety.

#### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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.

#### 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. The Statement of Claim is denied and dismissed in its entirety;

2. Each of the parties shall bear their own costs and expenses incurred herein, other than those specifically enumerated for herein.

FORUM FEES

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

3 hearing sessions X \$750.00 = \$2250.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200, and shall retain the hearing session deposit in the amount of \$750 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$375 are assessed against Claimants, and additional forum fees in the amount of \$1125 against Respondents, jointly and severally.

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

By The Arbitration Panel

Dated:

November 16, 1992

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Arthur L. Sirkin, Esq.  
Presiding Chair  
Public Arbitrator

Katherine M. Merrill  
Katherine M. Merrill  
Public Arbitrator

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Edward C. Oliver  
Industry Arbitrator

Date of Service by the NASD:

November 23, 1992

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

1. The Statement of Claim is denied and dismissed in its entirety;
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By The Arbitration Panel

Dated:

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Arthur L. Sirkin, Esq.  
Presiding Chair  
Public Arbitrator

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Katherine M. Morrill  
Public Arbitrator

11-16-92

Edward C. Oliver  
Edward C. Oliver  
Industry Arbitrator

Date of Service by the NASD:

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By The Arbitration Panel

Dated: \_\_\_\_\_

11/18/92

  
Arthur L. Sirkin, Esq.  
Presiding Chair  
Public Arbitrator

\_\_\_\_\_  
Katherine M. Morrill  
Public Arbitrator

\_\_\_\_\_  
Edward C. Oliver  
Industry Arbitrator

Date of Service by the NASD: \_\_\_\_\_

November 23, 1992