

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Alger B. and Isabelle L. Scott  
Alger B. & Isabelle L. Scott Trust

Case No. 92-00940

Name of Respondent(s)

Sheen Financial Resources, Inc.  
Brian J. Sheen  
First Preservation Capital, Inc.

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**REPRESENTATION**

For Claimants, Alger B. and Isabelle L. Scott ("the Scotts"): Robert H. Rex, Esq. of Dickenson, Murdoch, Rex and Sloan.

For Respondents, Brian J. Sheen ("Sheen"), Sheen Financial Resources, Inc. ("Sheen Financial") and First Preservation Capital, Inc. ("First Preservation"): Tim A. Shane, Esq. of Tim A. Shane. P.A.

**CASE INFORMATION**

Statement of Claim filed: March 18, 1992. Claimants' Submission Agreement signed: March 10, 1992.

Respondents' Joint Statement of Answer filed: May 20, 1992. Respondents' Submission Agreements signed: May 19, 1992 by Brian J. Sheen, on behalf of First Preservation, Sheen Financial and himself.

**HEARING INFORMATION**

On October 6, 1992, in Fort Lauderdale, Florida, a pre-hearing conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On January 4th, 5th, and 6th, 1993, in Fort Lauderdale, Florida, a hearing lasting seven (7) sessions was conducted.

### **CASE SUMMARY**

Claimants alleged that they are unsophisticated investors of 84 and 73 with no prior investment experience and financial background who entrusted Respondents with practically their total liquid net worth at the time, which was needed for generating income for Claimants' support and that contrary to Claimants wishes and best interest, Respondents made unsuitable recommendations in illiquid limited partnerships and mutual fund interests for Claimants' accounts which included Southmark Equity Partners, National Lease Income No. 4, High Equity Partners Series 85, Polaris Aircraft Income Fund #5, American Capital Gov't. Securities, National Federal Securities and Putnam High Income Government Trust. Claimants alleged that Respondents' acts constitute Violations of Florida Securities and Investors Protection Act. (F.S. 517), Common Law Fraud, breach of fiduciary duty and negligence as a result of the failure to supervise by Respondents, First Preservation and Sheen Financial.

Respondents denied all allegations of wrongdoing and stated that Claimants have failed to state a cause of action and that Claimants' Claims are barred by their laches in failing to notify Respondents of any claims against them within a reasonable period of time and that any damages incurred by Claimants may be the result of changes in Federal Tax Laws and other rules and regulations and not as a result of any actions by Respondents. Respondents maintained that the risks of the partnerships were clearly disclosed in the written offering materials provided Claimants and that Claimants had an obligation to read the materials. Respondents further maintained that Claimants were sophisticated, knew of and could afford to take the risks involved.

### **RELIEF REQUESTED**

Claimants requested recessionary damages in excess of \$21,000.00 as a result of the unsuitable investment made in Polaris Aircraft Income Fund and on the Claim for fraud, breach of fiduciary duty and the failure to supervise for the unsuitable investments made in National Lease Income Fund and Southmark Equity Partners and High Equity Partners an amount in excess of \$35,000.00 plus interest. Claimants also requested costs, expenses and disbursements, including reasonable attorneys' fees and for such other relief as the panel deems just and proper.

Respondents requested dismissal of Claimants' Claims.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. At the hearing the Panel entertained Respondents' Motion to Dismiss and Claimants' response and after careful consideration and deliberation said Motion is hereby denied.
2. Claimants agreed at the hearing that all of the investments other than Polaris were made more than five (5) years prior to filing the Statement of Claim and, therefore, the Claims under Chapter 517 of the Florida Statutes were barred by the Statute of Limitations as to all investments other than Polaris, therefore, as to those investments the Panel only considered the Common Law Claims.

### **AWARD**

1. The investment made in Polaris Aircraft Income Fund #5 ("Polaris") on or about September 16, 1989 shall be rescinded. The Claimants shall transfer their interests in Polaris to Respondents, Brian J. Sheen and/or Sheen Financial Resources, Inc., and shall execute all documents necessary to effectuate the transfer.
2. Brian J. Sheen and/or Sheen Financial Resources, Inc. shall pay \$18,158.24 to the Claimants. Brian J. Sheen and Sheen Financial Resources, Inc. (hereinafter collectively referred to as "Sheen") are jointly and severally liable for said payment.
3. Any income accrued and/or received on the Polaris investment between November 30, 1992 and the date of transfer shall be paid to Sheen at the time of transfer.
4. Respondent, First Preservation is found not liable and, therefore, all claims against it are hereby dismissed.
5. Claimants' request for attorneys' fees is hereby denied.

### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed \$3,800.00, One (1) pre-hearing telephone conference X \$300.00 plus seven (7) hearing sessions X \$500.00.

Claimants are hereby assessed \$1,900.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof leaving a balance of \$1,400.00 payable to the NASD by Claimants.

Respondents are hereby jointly and severally assessed forum fees in the amount of \$1,900.00 payable to the National Association of Securities Dealers, Inc.

The NASD shall retain the \$150.00 non-refundable deposit previously paid by Claimants.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

/s/  
Mara Beth Sommers, Esq.

Public

/s/  
Harry Polansky

Public

/s/  
Stephen P. Miller

Industry

Date of Decision: MARCH 2, 1993