

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Russell E. Patterson

vs.

Case #
92-01414

Name of Respondent

Howard W. Bible

REPRESENTATION

For Claimant, Russell E. Patterson ("Claimant"), David E. Shellenberger, Esq., from the Law Offices of David Shellenberger.

For Respondent, Linsco/Private Ledger Corp. ("Linsco"), Michael Unger, Esq. from the law firm of Goldstein & Manello, P.C.

For Respondent, Howard W. Bible ("Bible"), Robert V. Eberle, Esq. from the Law Offices of Robert V. Eberle.

CASE INFORMATION

Statement of Claim was filed on April 23, 1992.

Claimant's Submission Agreement was signed on April 22, 1992.

Linsco's Statement of Answer was filed on July 20, 1992.

Linsco's Submission Agreement was signed on July 8, 1992.

Bible's Statement of Answer was filed on November 15, 1992.

Bible did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: January 5, 1993 - 3 sessions.

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

At the time of the filing of this claim, Claimant alleges that he was thirty-eight years of age, married, lives in Sterling Massachusetts and is an electronic engineer. He also alleges that Bible is a lawyer and was a registered representative employed by Linsco from June, 1985 until January, 1988.

Claimant initiated this proceeding to recover losses incurred as a result of Respondents' mishandling of his investments. Claimant alleges that Respondents induced him to invest \$88,800.00 in Brook Hollow, Ltd. and 3300 Northeast Expressway real estate limited partnerships by misrepresenting the risks, likely returns and other investment characteristics of the partnerships. Claimant contends that the limited partnership investments were wholly unsuitable (his account information form was falsified) for him yet Bible persuaded him to invest his entire liquid net worth in them. Claimant also alleges that both limited partnerships have been liquidated in bankruptcy and the only distribution he received was a check for \$600.00 from the 3300 Northeast Expressway Limited Partnership. Claimant also alleges that Linsco failed to supervise Bible.

Claimant claims that Respondents are liable under the following theories of law: common law fraud; violation of anti-fraud provisions of the 1933 and the 1934 Securities Acts, the Massachusetts Securities Act, and the regulations promulgated thereunder; breach of fiduciary duty; breach of contract; reckless retention of Bible as a registered representative and failure to properly supervise the handling of Claimant's account; and, negligence. Claimant also states that Linsco is liable for Bible's acts and omissions under the controlling person provisions of the 1933 and 1934 Securities Act and the Massachusetts Securities Act and under the principle of respondeat superior.

Linsco denies any wrongdoing and denies liability. Linsco states that Claimant's case is simply that his real estate limited partnership investments have not performed as he anticipated. Linsco further states that such non-performance was probably caused by the poor economy, the poor real estate market and maybe poor management of the general partners.

Linsco further states that while Bible was a registered representative and sold the limited partnership investments while he was employed by Linsco, the transactions were done outside the scope of his authority and without Linsco's knowledge. Linsco also states that the investments were not products of Linsco. Said Respondent contends that it has always conducted its broker-dealer activities in a manner consistent with industry standards and state and federal laws. Linsco further contends that Bible, who was and still is, a practicing attorney should be held at a higher standard than most registered representatives.

Linsco argues that the claim should be dismissed based upon the fact that the applicable statutes of limitations for all of the Massachusetts and federal securities laws have run. Linsco also

argues that the Brook Hollow investment was made on April 23, 1986 and the Statement of Claim is dated April 22, 1992 and reserves the right to move to dismiss pursuant to NASD six year rule.

Bible in his Statement of Answer argues that Claimant's case should be barred by the Massachusetts and Federal Statutes of Limitation and the Doctrine of Laches. Bible states that Claimant executed the Brook Hollow Subscription Agreement on April 23, 1986 and executed his Statement of Claim in this matter on April 22, 1992. Bible reserves as a defense Section 15 of the NASD Code of Arbitration Procedure to show that this claim was not filed within the required time.

Bible also argues that as a result of Claimant's settlement with Linsco, Claimant waived and/or released Bible from liability on the 3300 Northeast Expressway, Ltd. Limited Partnership investment. Bible further argues that he has not executed a Submission Agreement or voluntarily submitted to jurisdiction of the NASD and protests the NASD's jurisdiction on the Brook Hollow Ltd. Limited Partnership investment. Bible further contends that Brook Hollow Ltd. was exempted from registration requirements of M.G.L. Chapter 110A, Section 302 pursuant to Section 402(b)(13) of the Securities Act. Bible contends that he did not collect a commission but that he charged a fee for his services as an attorney and advisor to Claimant and did not act in his capacity as an agent or broker-dealer in this transaction.

Bible states that Claimant has brought this case as a result of his dissatisfaction with the performance of his investment. Bible claims that the investment failure to perform as anticipated resulted from the poor economy, poor real estate market, and tax reform and not from any wrongdoing on his part. Said Respondent states that he did not warranty or promise future performance of either investment but rather disbursed information as contained in each investment's private placement memoranda. Respondent Bible denies that he falsified financial information or wrongfully encouraged Claimant to purchase additional investments.

RELIEF REQUESTED

Claimant requests an award of \$88,800.00 plus advisory fees of \$5,376.00, opportunity costs of \$200,000.00 based on suitable investments in stocks and bonds, \$100,000.00 in punitive damages, plus interest, costs and attorney's fees.

Respondents request that the claims against it be dismissed or that a ruling be made that Claimant is not entitled to an award. Respondents also request that it be awarded its legal expenses and costs for defending this arbitration.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

By letter dated October 9, 1992, Claimant advised the NASD that he had settled his claims with Linsco and thus dismissed Linsco as a Respondent.

By letter dated October 2, 1992, Claimant made a Motion to Bar Bible from Presenting any Matter, Arguments or Defenses and to Confirm that Claimant Need not Respond to Bible's Request for Documents. On October 19, 1992, Bible filed his Opposition to Claimant's Pending Motion. Claimant filed a Response to Respondent's Opposition to Claimant's Motion on October 19, 1992. This Panel denied Claimant's Motion to Bar, directed Bible to file and serve his Statement of Answer on or before November 6, 1992 and directed Claimant to respond to Bible's request for documents by November 6, 1992.

Bible filed a Motion to Dismiss All Arbitration Claims Relating to the Brook Hollow Investments and to Bar All Claims as Beyond the Statute of Limitations on November 9, 1992. Claimant filed his opposition to this Motion on November 24, 1992. This Panel reserved decision on this Motion until additional facts were heard.

At the commencement of the hearing, Bible raised his argument that he did not execute the Submission Agreement because the NASD does not have jurisdiction over him and moved to dismiss on this basis. After hearing arguments from both parties, this panel denied this motion based upon the fact that the NASD records indicate and Bible confirmed that he was a registered representative employed by Linsco at the time the purchases were made.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submission of the papers filed in the pending court action, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Bible's Motion to Dismiss is denied:
2. Howard W. Bible is hereby liable and shall pay Claimant **SEVENTY THREE THOUSAND TWO HUNDRED DOLLARS AND ZERO CENTS (\$73,200.00)**;
3. The claim for loss opportunity is denied:

4. The claim for interest is denied;
5. The claim for punitive damages is denied;
6. The claim for attorney's fees is denied;
7. Howard W. Bible is further liable and shall pay Claimant expert fees in the amount of **TWO THOUSAND ONE HUNDRED AND FIFTY DOLLARS AND ZERO CENTS (\$2,150.00)**;
8. All other claims for relief are denied.

COSTS

The parties requested that the November 12, 1992 and November 13, 1992, hearing dates be postponed and this Panel granted both requests and determined to waive the postponement fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Non-refundable Filing Fee: \$200.00
Hearing Session Fees: \$750.00 x 3 sessions = \$2,450.00

1. Forum fees are equally assessed against Claimant and Bible so that each party is assessed \$1,225.00;
2. Claimant deposited \$950.00 and shall receive a credit in that amount.

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

ARBITRATION PANEL

S. Lawrence Gwin, Jr., Esq.	-	Public Chairperson
W. Lawrence McNeil	-	Public Panelist
Theodore R. Turner, Jr.	-	Industry Panelist

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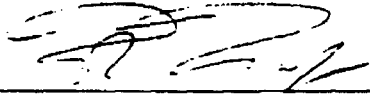
Concurring Arbitrator's Signature

W. Lawrence McNeil
W. Lawrence McNeil

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Concurring Arbitrator's Signature

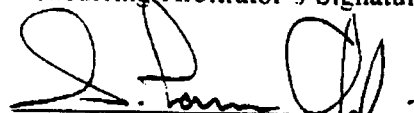
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Theodore R. Turner, Jr.

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Concurring Arbitrator's Signature



S. Lawrence Gwin, Jr., Esq.

Date of Decision: January 21, 1993