

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

James and Michele DeBaker
Ray and Donna Mroczynski and
Ken and Carol Neuser

and

92-01579

Name of Respondents

American Capital Financial Services and
Pravin Shah

REPRESENTATION OF PARTIES

Claimants James and Michele DeBaker, Ray and Donna Mroczynski and Ken and Carol Neuser (collectively as "Claimants") were represented by James A. Bolt, Esq., Milwaukee, Wisconsin.

Respondents American Capital Financial Services and Pravin Shah were represented by Michael H. Schaalman, Esq. of Quarles & Brady, Milwaukee, Wisconsin.

CASE INFORMATION

The Statement of Claim was filed on or about May 7, 1992. Submission Agreement of Claimants James and Michele DeBaker was signed on July 6, 1992. Submission Agreement of Claimants Raymond and Donna Mroczynski was signed on April 13, 1992. Submission Agreement of Claimants Ken and Carol Neuser was signed on April 13, 1992.

Statement of Answer was filed by Respondents American Capital Financial Services and Pravin Shah on or about September 8, 1992. Submission Agreement of Respondent American Capital Financial Services was signed by Lea S. Zeitman and was undated. Submission Agreement of Respondent Pravin Shah was signed on September 3, 1992.

HEARING INFORMATION

A pre-hearing conference was held on Monday, April 19, 1993 for one (1) session. The hearing was held on Tuesday, April 20, 1993 for two (2) sessions, Wednesday, April 21, 1993 for two (2) sessions, and Thursday, April 22, 1993 for two (2) sessions in Milwaukee, Wisconsin for a total of six (6) hearing and one (1) pre-hearing sessions.

CASE SUMMARY

Claimants alleged that Respondent Pravin Shah ("Shah") an employee of Respondent American Capital Financial Services, Inc. ("American")(collectively as "Respondents") failed to reveal to them that the limited partnership interest and mutual funds he recommended carried a high degree of risk; that the limited partnership interests that they purchased could easily be sold; that the investments would yield a guaranteed return which would not fluctuate; and that he failed to inform the DeBakers, the Mroczynskis and Carol Neuser that neither of them met the suitability standards established by the State of Wisconsin for such investments. Claimants also alleged that Shah's recommendations were unsuitable and in total disregard of their stated investment objectives, financial and personal circumstance. Claimants further alleged that Shah failed to disclose material facts in connection with the sale of the securities and violated the federal and state RICO statutes.

Respondents denied the allegations set forth against them. Respondents specifically stated that Shah specifically advised the claimants of the risks associated with each of the investments made by the Claimants, that Shah relied on information provided to him by the Claimants which indicated that they met the minimum suitability standards established by the State of Wisconsin, that they Claimants executed statements of investment objectives for each of the limited partnership purchases. Respondents denied the allegations of fraud and misrepresentation. Affirmative defenses including but not limited to the following were asserted by the Respondents: Claimants have failed to state a claim upon which relief can be granted; the claims are barred by the statute of limitations; any damages sustained by the claimants were caused by the intervening/superseding acts of others; the claims are barred by the Statute of Frauds; and the claims are barred by the doctrine of estoppel.

RELIEF REQUESTED

Claimants James and Michele DeBaker requested an award against each of the Respondents jointly and severally of actual damages in the amount of \$32,144.44, plus continuing interest; treble damages plus attorney's fees under 18 U.S.C. Sec 1962(A); double actual damages plus attorney's fees under Wisconsin Statute Sec. 946.82(2); and punitive damages in the amount of \$500,000.00. Claimants Ray and Donna Mroczynski requested an award against each of the Respondents jointly and severally of actual damages in the amount of \$29,132.83, plus continuing interest; treble damages plus attorney's fees under 18 U.S.C. Sec 1962(A); double actual damages plus attorney's fees under Wisconsin Statute Sec. 946.82(2); and punitive damages in the amount of \$500,000.00. Claimants Ken and Carol Neuser requested an award against each of the Respondents jointly and severally of actual damages in the amount of \$56,809.00, plus continuing interest; treble damages plus attorney's fees under 18 U.S.C. Sec 1962(A); double actual damages plus attorney's fees under Wisconsin Statute Sec. 946.82(2); and punitive damages in the amount of \$500,000.00.

Respondents requested that the claims asserted against them be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in 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 original(s) remain on file with the N.A.S.D..

AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing, and Respondents' Motion for Directed Verdict and arguments thereon, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The motion for directed verdict shall be and hereby is granted. The claims asserted in this matter shall be dismissed.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the N.A.S.D. on behalf of the Claimants and Respondent Pravin Shah shall be liable for additional forum fees in the amount of \$5,300.00. Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Frederick P. Kessler, Esq.

Frederick P. Kessler, Esq.
Public Arbitrator, Presiding Chair

July 16, 1993

Harry G. Slater, Esq.

Harry G. Slater, Esq.
Public Arbitrator

July 8, 1993

s/ Richard P. Franz

Richard P. Franz
Industry Arbitrator

August 11, 1993