

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patrick E. Gallagher

92-01584

Name of Respondents

Dain Bosworth Incorporated
Lynn R. Koenig

REPRESENTATION

For Claimant at the hearing: Vincent D. Louwagie, Esq. of Fruth & Anthony, Minneapolis, Minnesota.

For Respondents at the hearing: Renee L. Toenges, Esq. of Dorsey & Whitney, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: May 7, 1992.

Claimant's Submission Agreement signed on: April 30, 1992.

Joint Statement of Answer filed by Respondents, Dain Bosworth, Inc. and Lynn Koenig on: August 3, 1992.

Respondents, Dain Bosworth, Inc. and Lynn Koenig's Submission Agreements signed on: July 8, 1992.

HEARING INFORMATION

Hearing Dates: March 9, 1993 for two (2) sessions.
March 10, 1993 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Patrick Gallagher ("Gallagher") alleged that he purchased Midwest Life Insurance Company annuities ("Midwest Life") from Respondent Dain Bosworth, Inc. ("Dain") which he was told were a very safe and conservative investment. Gallagher alleged that Midwest Life's financial condition worsened thereby making the annuities a risky investment. Gallagher alleged that Dain owed a fiduciary duty to him, and that Dain breached this fiduciary duty by failing to tell him about Midwest Life's serious financial condition as soon as Dain knew or should have known of it.

Respondents Dain and Koenig denied each and every allegation of wrong doing contained in the Statement of Claim. Dain and Koenig alleged that they could not possibly have foreseen the collapse of Midwest Life due to the fraud and other illegal acts of its principals more than six months before it occurred.

RELIEF REQUESTED

Claimant requested payment of his actual damages, plus interest, costs and attorney's fees, in an amount in excess of \$382,215.00 and such other relief as is allowed by law.

Respondents requested that the panel deny the Statement of Claim in its 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.

At the conclusion of Claimant's case, Respondents made a Motion to Dismiss. The panel denied the motion.

At the end of the hearing, Claimant dismissed his claim against Respondent Lynn Koenig.

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 Claimant, Patrick Gallagher's, Statement of Claim is denied and dismissed in its entirety;

2. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated herein.

FORUM FEES

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

4 hearing sessions X \$750 = \$3,000

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 \$2250 are assessed against Respondent Dain Bosworth only.

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

By the Arbitration Panel:

Dated:

Cassandra Michalchick, Esq.
Presiding, Public Arbitrator

Emily F. Seesel, Esq.
Public Arbitrator

May 7, 1993

Brian L. Patterson
Brian L. Patterson
Industry Arbitrator

Date Award Served By The NASD: 5-8-93

2. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated herein.

FORUM FEES

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Additional forum fees in the amount of \$2250 are assessed against Respondent Dain Bosworth only.

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

By the Arbitration Panel:

Dated:

5-7-93

Cassandra Michalchick Esq.
Cassandra Michalchick, Esq.
Presiding, Public Arbitrator

Date Award Served By The NASD: 5-18-93

2. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated herein.

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Additional forum fees in the amount of \$2250 are assessed against Respondent Dain Bosworth only.

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

By the Arbitration Panel:

Dated:

Casandra Michalchick, Esq.
Presiding, Public Arbitrator

May 7, 1993

Emily F. Seesel
Emily F. Seesel, Esq.
Public Arbitrator

Date Award Served By The NASD: 5-18-93