

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

in the Matter of the Arbitration Between

Name of Claimant

Anne Arnold

and

92-01612

Name of Respondents

Oppenheimer & Co., Inc.
Van Kampen Merritt, Inc. and
Bruce McGaugh

REPRESENTATION OF PARTIES

Claimant appeared pro se.

Respondent Oppenheimer & Co., Inc. was represented by John T. McGuire, Esq. of Oppenheimer & Co., Inc., New York, New York.

Respondent Van Kampen Merritt, Inc. was represented by Timothy G. McDermott, Esq. of Gardner, Carton & Douglas, Chicago, Illinois.

Respondent Bruce McGaugh appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on or about May 12, 1992. Amended Statement of Claim was filed on or about October 26, 1992. Submission Agreement of Claimant Anne Arnold was signed on May 1, 1992.

Statement of Answer was filed by Respondent Oppenheimer & Co., Inc. on or about July 16, 1992. Submission Agreement of Respondent Oppenheimer & Co., Inc. was signed on July 15, 1992 by John T. McGuire, Esq.

HEARING INFORMATION

The hearing was held on Thursday, February 4, 1993 for two (2) sessions in Dallas, Texas.

CASE SUMMARY

Claimant alleged that Respondent Bruce McGaugh made material misrepresentations regarding Van Kampen Merritt unit investment trusts. Claimant specifically alleged that Mr. McGaugh did not advise her that the investments had a callable feature which would result in a return of principal.

Respondent Van Kampen Merritt, Inc. stated that it acted properly pursuant to its published policies and in accordance with the Claimant's instructions, either directly or through her agents.

Respondent Oppenheimer & Co., Inc. stated that the Claimant was advised of the nature of the investments in questions by Respondent McGaugh and that r. McGaugh specifically explained the meaning and impact of the callable feature. Respondent Oppenheimer & Co., Inc. further stated that the Claimant was thoroughly aware of the callable feature and its implications.

Respondent Bruce McGaugh stated that he provided a prospectus as well as other information that he had available at the time regarding the investments at issue. He further stated that he had reported to her that certain bonds had been called which is beyond the control of Respondents.

RELIEF REQUESTED

Claimant requested an award of \$98,947.00, treble damages pursuant to the Texas Deceptive Trade Practices Act and punitive damages in the amount of \$296,841.00.

Respondent Van Kampen Merritt, Inc. requested that the claims asserted against it be denied and that it be awarded its costs and attorney's fees.

Respondent Oppenheimer & Co., Inc. requested that the claims asserted against it be denied.

Respondent Bruce McGaugh requested that the claims asserted against him be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

This claim was originally filed against Dean Witter Reynolds, Inc. and Eppler Guerin & Turner, Inc., the parties had asserted various Cross-Claims and Third Party Claims which were dismissed by agreement of the parties with the exception of the Cross Claim of Van Kampen Merritt, Inc. against Oppenheimer & Co., Inc. Claimant settled her claims against Dean Witter Reynolds, Inc. and Eppler Guerin & Turner, Inc.

At the conclusion of Claimant's case in chief, Responent Van Kampen Merritt, Inc. moved for dismissal of the claims asserted against it. The panel took the motion under advisement until hearing additional testimony. Prior to the conclusion of this hearing the panel granted the motion to dismiss Respondent Van Kampen Merritt, Inc.

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 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 claims asserted in this matter shall be and hereby are dismissed in their entirety.
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 NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") 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 \$1000.00 previously deposited with the NASD by the Claimant and shall refund the sum of \$150.00. The NASD shall retain the non-refundable filing fee in the amount of \$500.00 and shall retain as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by the Respondent Van Kampen Merritt, Inc. Respondent Van Kampen Merritt shall pay to the NASD the sum of \$400.00 as forum fees. Respondent Bruce McGaugh shall pay the Claimant Anne Arnold the sum of \$1,000.00 as reimbursement of her hearing session deposit.

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each prehearing conference, if any.

Dated:

s/ Howard V. Tygrett, Jr., Esq.
Howard V. Tygrett, Jr., Esq.
Public Arbitrator, Presiding Chair

February 10, 1993

s/ Dan R. Leland
Dan R. Leland
Industry Arbitrator

February 10, 1993

The undersigned arbitrator does not concur in the above decision.

s/ Maxel B. Silverberg, Esq.
Maxel B. Silverberg, Esq.
Public Arbitrator

February 15, 1993