

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mary Anne Fossey (Fretland)

92-02242

Names of Respondents

Titan Value Equities Corp.
Robert Keats

REPRESENTATION

Claimant, Mary Anne Fossey was represented by Bruce Pearson of Fargo, North Dakota.

Respondents, Titan Value Equities Corp. and Robert Keats were represented by Thomas W. McCann, Esq. of Brown & Bain, Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc ("NASD") on July 8, 1992.

Claimant, Mary Anne Fossay's Submission Agreement was signed on April 20, 1992.

The Joint Statement of Answer was filed with the NASD by Respondents, Titan Value Equities Corp. and Robert Keats on December 14, 1992.

Respondent, Titan Value Equities Corp.'s Submission Agreement was signed on November 17, 1992 by Gregory E. Gates, Senior Vice President.

Respondent, Robert Keats' Submission Agreement was signed on November 30, 1992.

HEARING INFORMATION

The hearing was held on June 2, 1993 in Scottsdale, Arizona and the hearing lasted for two (2) hearing sessions.

CASE SUMMARY

Claimant, Mary Anne Fossay ("Fossay") alleged that the sum of \$415,000.00 which was the settlement she received as a result of severe injuries sustained in a car accident were placed in unsuitable and illiquid investments in various limited partnerships by Respondents, Robert Keats ("Keats") and Titan Value Equities Corp. ("Titan"). Fossay also alleged that Keats misrepresented the safety of the limited partnerships and misrepresented that the partnerships were liquid in the event she needed the money for any reason.

Titan and Keats alleged that Keats knew Fossay prior to her automobile accident and that she was a real estate broker in Scottsdale. Titan and Keats alleged that she was a sophisticated investor and that when he saw her after her automobile accident, there was no evidence of brain damage or diminished capacity. Keats asserted that Fossay approved the financial plan drawn up for her and that she agreed the plan accurately addressed and stated her financial needs and objectives. In addition, Keats and Titan alleged that Keats explained each of the limited partnerships to Fossay with the prospectuses and that the investments made for Fossay were suitable for her financial needs and objectives. Titan and Keats asserted that Fossay's own conduct sabotaged the investment plan detailed for her.

Titan and Keats asserted that the claims were barred by the applicable statutes of limitations and barred by waiver, estoppel and laches.

RELIEF REQUESTED

Fossay requested damages in the amount of \$354,560.00 including punitive damages of \$100,000.00.

Titan and Keats requested dismissal of the claim and an award of their attorney's fees and costs incurred in defending the matter pursuant to Arizona Revised Statutes Section 12-341.01 (A), (C).

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 originals remain on file with the NASD.

Respondents moved to dismiss the claim on the grounds that the claim was time-barred by the statute of limitations. In support of this argument, Respondents submitted a brief and claimant filed a response post-hearing. The panel took the motion under advisement until it had received the post-hearing submissions filed by the parties.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted against Titan and Keats by Fossay are denied and dismissed in their entirety on their merits. Accordingly, the motion to dismiss based on the statute of limitations argument is moot; and,
2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit previously deposited with the NASD by Claimant, Fossay. Titan and Keats are each assessed and shall pay to the NASD additional Forum Fees in the sum of \$375.00.

Forum Fees were assessed at the rate of \$750.00 per hearing session for two hearing sessions.

Concurring Arbitrators' Signatures

/S/ Warren C. Kotzmann
Warren C. Kotzmann, Esq.
Chairperson
Public Arbitrator

August 2, 1993
Dated

/S/ Howard W. Shannon
Howard W. Shannon
Panelist
Public Arbitrator

July 22, 1993
Dated

/S/ Jack Gunter
Jack Gunter
Panelist
Industry Arbitrator

July 28, 1993
Dated

Date award served on the parties: August 16, 1993