

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Catherine A. Gauch

and

92-02505

Name of Respondents

Schneider Securities, Inc.,  
Jon Joslin

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**REPRESENTATION OF PARTIES**

Catherine A. Gauch ("*Claimant*") was represented by Luke J. Danielson, Esq. and Kimberly J. Graber, Esq. of Gersh & Danielson, Denver, Colorado.

Schneider Securities, Inc. ("*Schneider*") was represented by Gary J. Ceriani, Esq. of Davis & Ceriani, P.C., Denver, Colorado.

Jon Joslin appeared at the hearing pursuant to subpoena for the purpose of testifying only.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 30, 1992. Amended Statement of Claim was filed on or about September 21, 1992. Submission Agreement of Claimant was signed on July 29, 1992 by Luke J. Danielson, as agent through power of attorney for Catherine A. Gauch.

Statement of Answer was filed by Respondent Schneider Securities, Inc. on or about September 25, 1992. Submission Agreement of Respondent Schneider Securities, Inc. was signed on February 4, 1993 by Barry D. Tull.

**HEARING INFORMATION**

A pre-hearing conference with James J. Cronin, Esq. presiding was held on Monday, July 12, 1993 for one (1) session.

The hearing was held on Wednesday, July 14, 1993 for three (3) sessions and Thursday, July 15, 1993 for three (3) sessions in Denver, Colorado for a total of six (6) hearing and one (1)

pre-hearing sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents Schneider and Jon Joslin breached their fiduciary duty; made fraudulent, incomplete or misleading statements to her in connection with her purchase of stock and promissory notes of Infinity Equity, Inc.; and that Schneider failed to properly supervise Respondent Jon Joslin. Claimant specifically alleged that Jon Joslin had numerous discussions and meetings with her where Joslin highly recommended the Infinity stock, where Joslin made representations that her return on the investment would be 50%, that she would get her money back within six to twelve months, and that she was induced to sell her stock investment portfolio which was inherited and which resulted in substantial adverse tax consequences. It was further alleged that the investment was not suitable for the Claimant.

Respondent Schneider denied the allegations set forth in the Statement of Claim and Amended Statement of Claim. Schneider affirmatively stated that in the event that Respondent Jon Joslin engaged in the conduct described in the Statement of Claim and the Amended Statement of Claim, it had no knowledge of any such conduct and such conduct violated the policies and procedures of the firm. The following affirmative defenses were asserted by Schneider: waiver, ratification, estoppel, contributory negligence, assumption of risk, failure to mitigate, and lack of reliance upon any action, or inaction of Schneider.

Respondent Jon Joslin did not file a responsive pleading.

### **RELIEF REQUESTED**

Claimant requested an award of at least \$200,000.00 plus costs, interest, and attorneys' fees.

Schneider Securities, Inc. requested that the claimant's complaint be dismissed, with prejudice, and that it be awarded its costs and attorneys fees incurred in the defense of this proceeding.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made on behalf of the Claimant and the statements of Respondent Jon Joslin, the panel has determined that Respondent Jon Joslin has been properly served with the Statement of Claim pursuant to §13 and §25 of the

N.A.S.D. Code of Arbitration Procedure (the "Code"). Based upon his representations to the panel, the undersigned arbitrators have also determined that Respondent Jon Joslin had received due notice of the hearing as required under §26 of the Code and that arbitration of the matter would proceed pursuant to §29 of the Code.

Respondent Jon Joslin did not file with the N.A.S.D. a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the N.A.S.D. Code of Arbitration Procedure (the "Code") and having appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Claimant filed a Motion to Dismiss Respondent Jon Joslin which was opposed by Respondent Schneider. The panel took the matter under advisement until the conclusion of the presentation of evidence at the hearing. The panel after considering the arguments of the parties and the evidence presented at the hearing has granted the motion.

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, 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 cost, expenses, and attorneys' fees incurred in this matter not specifically enumerated herein.


### **FORUM FEES**

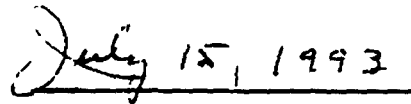
Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount


of 750.00 previously deposited with the N.A.S.D. by the Claimant and Claimant shall pay to the N.A.S.D. the additional sum of \$1,650.00 as additional forum fees. Respondent Schneider Securities, Inc. shall pay to the N.A.S.D. the sum of \$2,400.00 as additional forum fees.

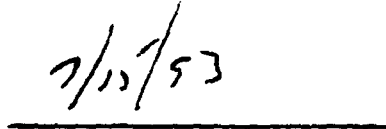
Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference, if any. *Fees are payable to the National Association of Securities Dealers, Inc.*

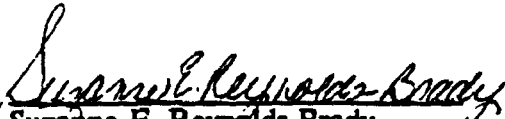
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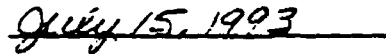
  
James J. Cronin, Esq.  
Public Arbitrator, Presiding Chair

  
July 15, 1993

  
Devereux C. Josephs  
Public Arbitrator

  
7/15/93

  
Suzanne E. Reynolds-Brady  
Industry Arbitrator

  
July 15, 1993