

N.A.S.D. AWARD  
NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration  
Between

Case Number 92-02769

Janetta S. Grapperhaus,

Claimant,

**PUBLIC**

vs.

Andover Group, Inc., Andover  
Securities, Inc., and Daniel E.  
Gooding, individually and d/b/a  
Highland Financial Group,

Respondents.

REPRESENTATION:

Paul E. Parker, Esq. and Nancy Green of Spilman, Thomas, Battle  
& Klostermeyer, P.O. Box 4474, Morgantown, WV 26504, for Claimant

David P. Hargrave, Esq., Of Counsel, Frensley & Towerman,  
Suite 105, 801 West 47th Street, Kansas City, MO 64112, for  
Respondents, Andover Securities, Inc. and Daniel E. Gooding

CASE INFORMATION:

Statement of Claim filed on August 13, 1992.

Claimant's Submission Agreement signed on September 8, 1992.

Respondents' Answer filed on November 11, 1992.

Motion to Decline Jurisdiction on behalf of Andover Group, Inc.  
and Highland Financial Group filed on November 11, 1992.

Respondents', Andover Securities, Inc. and Daniel E. Gooding,  
Submission Agreement signed on November 6, 1992

#### HEARING INFORMATION:

Hearing Date: Hearings at which witnesses were heard:  
August 24 and August 25, 1993, two complete days.

Briefs submitted by counsel and reviewed: September 7, 1993.

Meeting of Arbitrators to review testimony and make an award:  
September 9, 1993.

Hearing Location. Westin William Penn Hotel, Pittsburgh, PA.

#### PRELIMINARY MATTERS:

The Motion to Decline Jurisdiction on behalf of Andover Group, Inc. and Highland Financial Group was granted on the ground that they are not members of NASD and have not voluntarily submitted to arbitration.

#### CASE SUMMARY

Claimant alleged that she was in her mid-thirties when her husband, an Air Force pilot, was killed in an airplane crash in 1984. At the time, she had a high school degree, with one year at a state college and had also obtained a two-year nursing degree. In March of 1987, Claimant received the sum of \$320,000 in settlement of her husband's crash. She was also receiving between \$600 and \$700 a month from the Veterans' Administration and \$800 a month from Social Security. She bought a \$165,000 home, paying \$35,000 cash, and mortgaged the balance. Claimant testified that her father was a coal miner and she had never handled substantial sums of money nor made any investments prior to receiving the settlement. She went to the F. & M. Bank (now the Valley Bank) in Morgantown, where she was living, to invest approximately \$284,000 of her money with the bank's trust department. The bank invested her money in a conservative allocation among GNMA funds, bond funds and an equity mutual fund.

On the recommendation of her sister and a boyfriend, she made an appointment to see Respondent, Daniel E. Gooding. Claimant alleged that she informed the Respondent that she was not dissatisfied with the Bank but had been told that she could do better. She said that she required a minimum cash flow of \$800 a month to meet her mortgage payment and wanted to protect her principal. Claimant said that she needed investment advice and help in handling her money.

Claimant testified that Gooding induced her to liquidate all of her investments at the bank, turn everything into cash, and allow him to reinvest in a proposed portfolio which he presented to her, with projections, showing a 42% increase in income as well as eliminating taxes on \$25,000 of income.

Claimant agreed to follow Gooding's advice and invested approximately \$284,000 in a portfolio consisting of 26.4% in stock mutual funds, 19.4% in bond funds, and the balance of 54.20% in real estate partnerships, an equipment leasing trust and a real estate mortgage trust. She said she was not warned by Gooding about any risk. The commissions on the purchases ranged from a minimum of 6.25% to a maximum of 10%. As the real estate market declined, the real estate trusts ceased paying Claimant income, causing her to go into a withdrawal plan involving other funds. She eventually closed out her account with Gooding and liquidated all but the real estate trusts, which Claimant's expert testified could only be sold on "the vulture's market" for nominal value.

Claimant claims actual loss of \$136,031 and \$15,788 in "opportunity costs," for a total of \$151,819, plus punitive damages.

Claimant accuses Gooding of questionable sales practices, inappropriate projections and investment advice, and placing Claimant in investments which were unsuitable for her financial needs, condition and objectives. The action filed is for breach of contract, breach of a fiduciary duty of fair dealing, negligence and misrepresentation and fraud under West Virginia's consumer protection laws.

Respondents contend that Claimant was not satisfied after one year with the bank trust department and sought out Gooding to invest her money in a more aggressive portfolio to obtain higher returns. Gooding furnished her with a proposed portfolio with projections taken from the sponsor's offering materials. Claimant was given copies of the prospectus and private placement memorandum to study, and she signed an acknowledgment that she had received, read and understood same. She admitted seeing the warning about risk factors in the documents, but explained that she believed them to be comparable to the warning about the risk of an operation that a patient must sign at the hospital.

Claimant also received a summary of her investment objectives sent to her by Gooding and made no alterations or changes. Respondents claim that the portfolio purchased meets those objectives. Respondents contend that Claimant is an extremely intelligent and educated woman who received very high grades at school and college and clearly understood the risk of

the investments. Respondents also claim that the investments were suitable for her financial situation.

An expert witness for Respondents testified that the present value of all the real estate partnerships and assets still owned by Claimant amounts to \$115,327. Respondents claimed that if the market value of the real estate partnerships was added to the sale price received by Claimant for the liquid assets and the distributions she received, there would be a gain of \$55,464 instead of a loss. Respondents claim that they cannot be held responsible for the crash of the real estate market.

The President of Andover Securities, Inc. testified that he reviewed the suitability requirements of the offering circulars and Claimant's income and net worth furnished by Claimant. No further supervision was exercised over the broker.

#### RELIEF REQUESTED

Claimant, Janetta S. Grapperhaus, requested the sum of \$151,819 in damages, plus punitive damages. Respondents requested that all claims be dismissed.

#### AWARD

After considering the pleadings, the testimony of witnesses at the evidentiary hearings and the briefs of counsel for Claimant and Respondents, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent, Daniel E. Gooding, is liable to and shall pay the Claimant, Janetta S. Grapperhaus, the sum of \$27,500 in damages.
2. The Respondent, Andover Securities, Inc., is liable to and shall pay the Claimant, Janetta S. Grapperhaus, the sum of \$27,500 in damages.
3. Each Respondent shall reimburse the Claimant, Janetta S. Grapperhaus, the sum of \$212.50, totaling one-half of the filing fee and hearing deposit paid by Claimant.

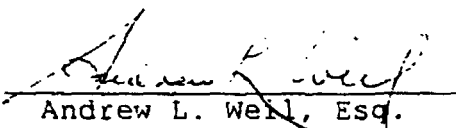
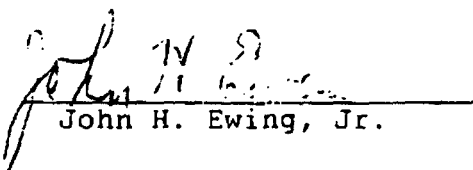
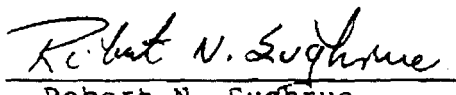
### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and to be shared equally:

4 sessions x \$750	= \$3,000, less
hearing deposit of \$750	= \$2,250 net due.

There was also one session of Arbitrators' deliberation.

### ARBITRATION PANEL

<u>Name and Signature</u>	<u>Status</u>	NASD Date <sup>Executed</sup> <del>Signed</del>
 Andrew L. Weil, Esq.	Public Arbitrator & Chairperson	<u>13 September 1993</u>
 John H. Ewing, Jr.	Industry Arbitrator Panelist	<u>14 Sept. 1993</u>
 Robert N. Sughrue	Public Arbitrator Panelist	<u>20 September 1993</u>

Date of Decision: September 29, 1993