

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Angeline Hines

92-03093

Name of Respondent(s)

MCW, Inc., f/k/a  
B.C. Christopher Securities Company  
David Sederholm

---

**REPRESENTATION**

For Claimant: Mark D. Wasserstrom Esq., of Kansas City, Missouri.

For Respondents: Michael Vaughan, Esq. of Calkins, Weisenfels & Vaughan, Kansas City, Missouri.

**CASE INFORMATION**

Statement of Claim filed: September 14, 1992..

Claimant's Submission Agreement signed on: August 29, 1992.

Amended Statement of Claim filed: November 23, 1992.

Joint Statement of Answer filed by Respondents, MCW, Inc. and David Sederholm on or about: December 4, 1992.

Respondents. have failed to file submissions to arbitration.

**HEARING INFORMATION**

Hearing Date: April 15, 1993. Two (2) sessions.

Hearing Location: Kansas City, Missouri.

### CASE SUMMARY

Claimant, Angeline Hines ("Claimant") stated that Respondent David Sederholm ("Sederholm") made an unsolicited call to Claimant recommending that she put her holdings in Prudential Bache High Yield Fund, Inc. and purchase VMS Strategic Land Trust SBI Fund Investment. Claimant further stated that Sederholm had been employed by MCW, Inc. f/k/a B.C. Christopher Securities Company ("MCW"). Claimant alleged that VMS was unsuitable, and that the misrepresentations made by Sederholm about VMS being a safe investment, caused Claimant to purchase VMS. In addition, Claimant alleged: a breach of fiduciary duty; failure to supervise; a failure to exercise due diligence; a failure to provide a prospectus for VMS prior to Claimant's purchase; a failure to review Claimant's account and advise her to diversify or to invest in a more appropriate security or program; negligence; violations of NASD rules; violations of Federal and State Securities Laws; and common law negligence by Sederholm and MCW.

In their Joint Answer, Respondents MCW and Sederholm denied each and every material allegation asserted in the Statement of Claim. In addition, Respondents MCW and Sederholm asserted the following affirmative defenses:

1. Claimant is not entitled to punitive damages or an award of attorneys' fees as a matter of law, and any award of punitive damages would constitute a denial of due process and equal protection under both the federal and state constitutions. In addition any award of punitive damages would be contrary to the law of the state of New York, under which the parties agreed to be bound, in as much as New York law prohibits arbitrators from awarding punitive damages. Barbier v Shearson Lehman Hutton, Inc., 948 F. 2d 117 (2d Cir. 1991); Fahnestock & Company v. Waltman, 935 F. 2d 512 (2d Cir. 1991).

2. Claimant's claims for relief are barred in whole or in part by the applicable statutes of limitation because more than five years had passed since the date Claimant purchased her VMS Strategic Land Trust.

3. As a result of Claimant's failure to notify Respondents of the alleged acts or omissions promptly after Claimant should have reasonably discovered the alleged acts or omissions, Claimant is barred from recovering from Respondents under the doctrines of ratification, account stated, estoppel, waiver and laches.

4. Respondents are not liable to Claimant; and her claims are barred, because of Respondents good faith and due diligence in conduct of their affairs with Claimant.

5. Claimant failed to act promptly to mitigate her alleged damages.

6. By failing to exercise the degree of care over her affairs and investments which an ordinary prudent investor would exercise, Claimant caused or contributed to cause her alleged

damages and, thus, is barred by her contributory negligence.

7. Respondents' conduct was not the proximate cause of any loss or damage to Claimant. The loss or damage alleged was caused, if at all, by unforeseen market factors and conditions affecting the value of securities in Claimant's account, for which Respondents are not liable or responsible.

8. Should it be determined that Respondents are liable for any part of Claimant's claimed damages, which are expressly denied, then fault should be divided between Claimants and Respondents.

9. The Amended Statement of Claim fails to state a claim upon which relief can be granted.

#### **RELIEF REQUESTED**

Claimant requested an award against the Respondents for the principal amount of \$24,454.00; interest thereon from October 17, 1986 to the date of award herein at the highest rate allowed by law; reasonable attorneys' fees; forum costs; or in the alternative, rescission of the sale so that Claimant delivers the balance of the shares she holds in VMS and Respondents pay her \$38,740.00 interest thereon at 9% per annum from October 17, 1986, forum costs, and attorneys' fees; and such other and farther orders and relief as the Arbitrators deem fair and proper.

Respondents requested that Claimant's claims be denied on their entirety and that an award in favor of Respondents be entered together with the costs associated with this proceeding.

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

MCW and Sederholm did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing and are bound by the determination of the arbitration panel on all issues submitted.

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.

**AWARD**

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

1. Claimant, Angeline Hines' claims are hereby denied and dismissed with prejudice.

**OTHER COSTS**

Each party shall bear its own costs of this arbitration including attorneys' fees, except as set forth more fully below.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure (the "Code"), the following Forum Fee(s) are assessed.

2 hearing sessions X \$400 = \$800

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00 and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$400.00 are assessed against MCW, Inc.

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

**Concurring Arbitrators**

May 13, 1993

Honorable William Peters

May 19, 1993

Stephen Kort

May 7, 1993

Richard McGaughey

Date of Service by the NASD: May 21, 1993