

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ruth B. Munhall

vs.

Case #
92-03369

Name of Respondent

First Georgetown Securities Inc.

REPRESENTATION

Claimant, Ruth B. Munhall, was not represented by counsel.

For Respondent, First Georgetown Securities, Inc.: John S. Stoppelman, Esq., of Law Offices of John S. Stoppelman.

CASE INFORMATION

Statement of Claim filed: October 5, 1992.

Claimant's Submission Agreement signed on: August 31, 1992.

Statement of Answer filed by Respondent, First Georgetown's Securities on: December 7, 1992.

Respondent, First Georgetown's Securities Submission Agreement signed on: December 4, 1992.

HEARING INFORMATION

Hearing Date/Session: June 3, 1993 / one session

Hearing Location: NASD offices located in Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that on November 18, 1986 she opened an account with First Georgetown Securities (FGS), and was told that it was registered in the state of Massachusetts. Claimant further alleged that in March, 1989, she learned from the Massachusetts Securities Division, Secretary of State, that Respondent was not registered to do business in the state, and that it was

that it was unlawful for any person to offer or sell any security in the state unless they are registered. Claimant maintained that she then asked the President of FGS if all of her transactions could be rescinded and was told that they would not. Claimant alleged that FGS was the company that first recommended to her stock in Neti Technologies, Inc. which was subsequently declared worthless.

Respondent alleged that any complaint against it by Claimant for not being registered in Massachusetts is barred by the statute of limitations. Respondent further alleged that their error in not registering in Massachusetts was not fraudulent, willful or intentional and is not connected to any losses suffered by Claimant. Respondent denied telling Claimant that FGS was registered in Massachusetts.

RELIEF REQUESTED

Claimant requested damages of \$15,419.17 plus 6% interest from March 20, 1989. Claimant also requested expenses other than the filing fee for arbitration, plus attorney's fees including miscellaneous expenses, plus punitive damages, the amount to be set by the arbitrators.

Respondent requested that the claims against it be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

On April 30, 1993, this Arbitrator signed an Order of appearance on behalf of Dr. Munhall directed to the Staff Attorney, Securities Division of the Secretary of State's office for the Commonwealth of Massachusetts. On May 1, 1993, I denied Dr. Munhall's Motion to Preclude FGS's Answer. Also on May 19, 1993, I issued on behalf of FGS an Order of Production directed to Dr. Munhall. Finally on June 1, 1993, I denied FGS' Motion for a postponement.

Prior to the commencement of the hearing, a conference was conducted to resolve some outstanding discovery items. Following the hearing on this matter, I requested post-hearing memoranda to be filed on or before July 1, 1993 on the issue: "What is the legal effect, if any, of FGS not being registered in the Commonwealth of Massachusetts?" These memoranda were duly filed in New York and received by me in Boston on July 14, 1993, together with an Affidavit of Charles W. Harris (produced by FGS) which I have not accepted into evidence.

AWARD

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

1. With regard to Dr. Munhall's stocks purchased and sold through FGS prior to

March 20, 1989, I find for FGS.

- 2.. With regard to Dr. Munhall's alleged losses in Neti Technologies, Inc. stock originally purchased November 25, 1986 through FGS, as were subsequent purchases, I find for FGS.
3. With regard to Dr. Munhall's stocks purchased through FGS prior to March 20, 1988 (a full year before her discovery of FGS' registration status) and later sold in 1989 at Citicorp Brokerage, I find for Respondent FGS.
4. With regard to Dr. Munhall's stock purchased through FGS after March 20, 1988 (the beginning of a full year before her said discovery) and later sold in 1989 at Citicorp Brokerage, I award to Dr. Munhall and FGS is liable to Dr. Munhall, as follows:
 - a. **FOUR HUNDRED AND SEVEN DOLLARS AND SEVENTY NINE CENTS (\$407.79)** on the 3,000 shares American Perf Inc. purchased April 4, 1988 which includes interest at a rate of six percent (6%) from December 15, 1989 to September 1, 1993.
 - b. **FOUR HUNDRED AND FIFTEEN DOLLARS AND SIXTY FIVE CENTS (\$415.65)** on the 6,000 shares Life Insurance Software purchased April 8, 1988 which includes interest at a rate of six percent (6%) from December 15, 1989 to September 1, 1993.
 - c. **ONE THOUSAND TWO HUNDRED AND SIXTY EIGHT DOLLARS AND THREE CENTS (\$1,268.03)** on the 11,000 shares Life Insurance Software purchased May 25, 1988 which includes interest at a rate of (6%) from December 15, 1989 to September 1, 1993.
 - d. **THREE HUNDRED AND TWENTY SIX DOLLARS AND EIGHTY EIGHT CENTS (\$326.88)** on the 500 shares of Sun River Gold purchased September 6, 1988 which includes interest at a rate of six percent (6%) from June 30, 1989 to September 1, 1993.
 - e. **TWO HUNDRED AND THIRTY TWO DOLLARS AND TWENTY SEVEN CENTS (\$232.27)** on the 3,000 shares Life Insurance Software purchased November 4, 1988 which includes interest at a rate of six percent (6%) from December 15, 1989 to September 1, 1993.
 - f. **ONE THOUSAND SIX HUNDRED AND SIX DOLLARS AND FIFTEEN CENTS (\$1,606.15)** on 3,000 shares Mikado Resources Ltd. purchased November 18, 1988 which includes interest at a rate of six percent (6%) from July 6, 1989 to September 1, 1993.

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Therefore, FGS is liable to Dr. Munhall in the amount of \$4,256.77 to be paid on or before September 1, 1993; and thereafter at a rate of six percent (6%) interest for the unpaid balance.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed against Claimant.

One session x \$300.00 per session = \$300.00 less Claimant's hearing session deposit \$300.00
= net \$0.00 due.

Sole Arbitrator's Signature

Julien F. Begien

Julien F. Begien, Esq.

Public Arbitrator

Date of Decision: August 10, 1993