

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Marydell S. Dilworth, Trustee

92-03464

Name of Respondents

Robert W. Baird & Co., Inc., Northwestern Mutual Life Insurance Company,  
John H. Myaard, David B. Schoon, Francis Gingras

---

**REPRESENTATION OF PARTIES**

For Claimants at the hearing: Peter W. Steketee, Esq., Grand Rapids, Michigan.

For Respondents, Robert W. Baird & Co., Inc., Northwestern Mutual Life Insurance Company,  
and David B. Schoon at the hearing: Joseph J. Hasman, Esq. of Peterson & Ross, Chicago,  
Illinois.

For Respondents, John Myaard and Francis Gingras at the hearing: David A. Baugh, Esq. of  
Mora & Baugh, Ltd., Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: October 12, 1992. Claimants' Submission Agreement signed on:  
October 23, 1992.

Joint Statement of Answer filed by Respondents: Robert W. Baird & Company, Inc.,  
Northwestern Mutual Life Insurance Company, and David Schoon on: February 11, 1993.  
Statement of Answer filed by Respondent John F. Myaard on: February 1, 1993. Statement  
of Answer filed by Respondent Francis Gingras on February 1, 1993.

Respondent Robert W. Baird & Co., Inc.'s Submission Agreement signed on February 10, 1993.  
Respondent Northwestern Mutual Life Insurance Company's Submission Agreement signed on  
February 9, 1993. Respondent David Schoon's Submission Agreement signed on: February 10,  
1993. Respondent John Myaard's Submission Agreement signed on: February 16, 1993.  
Respondent Francis Gingras's Submission Agreement signed on: January 25, 1993.

### **HEARING INFORMATION**

Pre-hearing conference sessions: September 15, 1993 for one (1) session with the panel;  
October 20, 1993 for one (1) session with NASD Staff.

Hearing dates/sessions: November 29, 1993 for three (3) sessions;  
November 30, 1993 for three (3) sessions;  
December 6, 1993 for two (2) sessions.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimant, Marydell Dilworth, Trustee ("Dilworth") alleged that Respondents Robert W. Baird and Company, Inc. ("Baird"), Northwestern Mutual Life Insurance Company ("Northwestern"), David Schoon ("Schoon"), John Myaard ("Myaard"), and Francis Gingras ("Gingras") sold Dilworth an unsuitable security, 100 units of Freeman Diversified Real Estate IV limited partnership which today, are alleged to be virtually worthless.

Respondents Baird, Northwestern, and Schoon, in their joint Statement of Answer alleged that the limited partnership was suitable and appropriate in view of her total financial situation, investment strategy and her stated investment objectives of "Growth-Medium risk."

Respondent Myaard denied the allegations set forth in the Statement of Claim. Myaard alleged affirmative defenses, among them was that Dilworth assumed the risk because she was a sophisticated investor.

Respondent Gingras alleged that Dilworth met all suitability requirements and that the prospectus fully disclosed the material risks involved.

### **RELIEF REQUESTED**

Claimant requested that her purchase be rescinded. Claimant alleged damages in the amount of \$100,000.00, plus exemplary damages under Michigan law, interest and reasonable attorney's fees.

Respondents Robert W. Baird & Co., Inc., Northwestern Mutual Life Insurance Company, and David Schoon requested that the claim be denied.

Respondent John Myaard and Francis Gingras requested that the claim be dismissed and that he be awarded his costs.

**OTHER ISSUES CONSIDERED & DECIDED**

Respondents Francis Gingras and John Myaard filed a Motion To Dismiss the Statement of Claim and Respondents Robert W. Baird and Company, Inc., Northwestern Mutual Life Insurance Company and David Schoon joined in the motion. Claimant filed a response to the motion. The panel denied the motion.

The parties present at the hearing 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Claimant, Marydell Dilworth is awarded the total amount of One Hundred Thousand Dollars (\$100,000.00) from the Respondents, set forth as follows:

a. Respondent Robert W. Baird & Co., Inc. shall pay to the Claimant, Seventy Thousand Dollars (\$70,000.00);

b. Respondent Northwestern Mutual Life Insurance Company shall pay to the Claimant, Twenty Thousand Dollars (\$20,000.00);

c. Respondents, Robert W. Baird & Co., Inc., Northwestern Mutual Life Insurance Co., Inc., David Schoon, Francis J. Gingras, and John H. Myaard, are jointly and severally liable for, and shall pay to the Claimant, Five Thousand Dollars (\$5000.00);

d. Respondent David Schoon shall pay to the Claimant, Two Thousand Five Hundred Dollars (\$2,500.00);

e. Respondent Francis J. Gingras shall pay to the Claimant, Two Thousand Dollars (\$2000.00);

f. Respondent John H. Myaard shall pay to the Claimant, Five Hundred Dollars (\$500.00).

2. Upon Claimant's receipt of full payment of the \$100,000.00, Claimant shall transfer and convey her entire limited partnership interest in Freeman Diversified Real Estate IV to the Respondents pro rata in accordance with the payments made by each of them to her as set forth above.

3. Claimant's request for interest is denied;
4. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically set forth under Forum Fees below.

**FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

8 hearing sessions X \$500.00 = \$4000.00 plus two prehearing conference sessions x \$300 = \$600 = net \$4600 due.

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$150, and shall retain the hearing session deposit in the amount of \$500 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$4100 are assessed as follows: Claimant shall pay to the NASD the amount of \$2,050.00 and Respondents shall, jointly and severally, pay to the NASD the amount of \$2,050.00.

The additional forum fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

**By The Arbitration Panel:**

Dated:

<u>3-3-94</u>	s/s	<u>John E. McGovern, Jr., Esq.</u> John E. McGovern, Jr., Esq. Presiding, Public Arbitrator
<u>3-3-94</u>	s/s	<u>Everett A. Roberts, EA</u> Everett A. Roberts, EA Public Arbitrator
<u>3-3-94</u>	s/s	<u>Thomas M. Lehner</u> Thomas M. Lehner Industry Arbitrator

Date Award Served By The NASD: 3-4-94

---