

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

Terri J. Meador

and

92-03930

Name of Respondents

Lovett Underwood, Neuhaus & Webb, Inc.; Kemper Securities, Inc.  
Paul Mahachek

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**REPRESENTATION OF PARTIES**

Terri J. Meador ("Claimant") was represented by Robert W. Hammer, Esq., Fort Worth, Texas.

Lovett Underwood, Neuhaus & Webb, Inc., Kemper Securities, Inc. and Paul Mahachek ("Respondents") were represented by William D. Nelson, Esq. of Robinson, Waters, O'Dorisio and Rapson, Denver, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 19, 1992. Submission Agreement of Claimant was signed on November 16, 1992. Claimant's First Amended Original Petition was filed on or about August 16, 1993. Supplemental Petition was filed on January 26, 1994.

Statement of Answer was filed by Respondents on or about February 3, 1993. Statement of Answer to the Amended Statement of Claim was filed on or about September 8, 1993. Submission Agreement of Respondent Kemper Securities, Inc., successor by merger to Lovett Underwood, Neuhaus & Webb, Inc. was signed on February 3, 1993 by Janet L. Reali. Submission Agreement of Respondent Paul Mahachek was signed on February 2, 1993.

**HEARING INFORMATION**

A pre-hearing conference was held on August 23, 1993 for one (1) session with Howard V. Tygrett, Esq., the then presiding Chairperson.

The hearing was held on Wednesday, January 26, 1994 for two (2) sessions, Thursday, January 27, 1994 for three (3) sessions in Dallas, Texas for a total of five (5) hearing and one (1) pre-hearing sessions.

### **CASE SUMMARY**

Claimant alleged that Respondent Mahachek sold 2,600 shares of blue chip stocks to purchase 41,500 shares of below investment grade securities; that her investment objectives had not changed during the time period in question; and that she had not authorized the concentrated investment in speculative, unrated, below investment grade securities. Claimant also alleged that Respondent Mahachek had not disclosed the risks of investing in Cade Industries, ICH, and Kelley Oil.

Respondents denied the allegations and stated that the Claimant's accounts were handled properly. Respondents specifically stated that the purchases complained of were executed after several weeks of discussion and consideration. It was further stated that subsequent to the purchases at issue, Mahachek was in regular contact with the Claimant and continued to supply her with press releases and research and other reports concerning the securities she had purchased. The following affirmative defenses were asserted by the Respondents:

- \* the Claimant fails to state a claim upon which relief can be granted.
- \* the claims asserted are barred by the doctrine of estoppel, waiver, acquiescence and ratification.
- \* the claims are barred by the applicable statutes of limitation.
- \* the Claimant's damages, if any, were caused by factors over which Respondents had neither responsibility nor control.
- \* failure to mitigate.
- \* the Claimant's reliance on the alleged misrepresentations and omissions is not reasonable.
- \* the Claimant's damages, if any, were not proximately caused by any act or omission of Respondents.
- \* the claims are barred by her own negligence which exceeded any alleged negligence of Respondents.

### **RELIEF REQUESTED**

Claimant requested an award in excess of \$110,000.00 and attorney's fees.

Respondents requested that the claims asserted against them be dismissed and denied.

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

The claims originally filed in this matter included allegations against Morris Galter. Mr. Galter was subsequently dismissed from this proceeding by agreement between Claimant and Mr. Galter.

At the commencement of this hearing on Wednesday, January 26, 1994, Claimant filed a Motion for Leave to File Supplemental Petition which was granted by the panel. In granting the Motion, the panel has also granted Respondents the right to file an Answer and brief within ten (10) days from the end of the hearing.

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 and the post-hearing submissions, 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 and denied in their entirety.
2. Each party shall bear its own costs, expenses and 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. Claimant shall pay to the N.A.S.D. the sum of \$1,125.00 and Respondents shall be and hereby are jointly and severally liable for and shall pay to the N.A.S.D. the sum of \$1,875.00 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.

The N.A.S.D. shall retain postponement fees in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimant. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Ralph Steven Janvey, Esq.  
Ralph Steven Janvey, Esq.  
Public Arbitrator, Presiding Chair

March 1, 1994

s/ Alice A. Waters, Esq.  
Alice A. Waters, Esq.  
Public Arbitrator

March 1, 1994

s/ Thomas M. Campbell, Jr.  
Thomas M. Campbell, Jr.  
Industry Arbitrator

February 28, 1994