

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Essie Darlene Hart

92-04339

Name of Respondent

William H. Sharp, doing business as. Consumer  
Financial Service Inc.

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**REPRESENTATION**

For Claimant: Essie Darlene Hart appeared pro se.

For Respondent: William H. Sharp, doing business as Consumer Financial Service Inc.,  
appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: December 29, 1992.

Claimant's Submission Agreement signed on: December 17, 1992.

Statement of Answer filed by Respondent William H. Sharp on: March 22, 1993.

Respondent William H. Sharp's Submission Agreement signed on: March 23, 1993.

**HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: July 20, 1993 for one (1) session.

Hearing Location: St. Louis, Missouri.

**CASE SUMMARY**

Claimant Essie Darlene Hart ("Hart") alleged that Respondent William H. Sharp, doing business

as Consumer Financial Service Inc. ("Sharp"), failed to inform her of the risks of an investment in the Oppenheimer High Yield Fund, the National High Yield Fund and the Van Kampen High Yield Fund. In addition, Hart alleged that Sharp did not tell her that if the investment was made in one company, a discount would have been given and that no statements had been received in the five years she held the investments. Furthermore, Hart alleged that the value of the funds had decreased.

Respondent Sharp denied the material allegations of the Statement of Claim, alleging that:

1. In May of 1987, Hart's money was invested equally between the National Bond Fund, the Oppenheimer High Yield Fund and the Van Kampen U.S. Government Fund after a thorough discussion of her needs and the investments available;
2. Subsequent market conditions and the economy did not cooperate in providing the kind of investment performance that was envisioned;
3. All aspects of the investments, including risks, were disclosed and discussed prior to investment. It was Sharp's practice to show the prices of the investments in the paper and use the listings to further illustrate market fluctuation; and
4. To properly diversify her portfolio, three funds in different companies were chosen. No discount was received because Hart had insufficient funds available to meet the breakpoint for the more established funds.

#### **RELIEF REQUESTED**

Claimant Hart requested entry of an award in the sum of \$10,000.00.

Respondent Sharp did not request a specific relief in his Statement of Answer, but at hearing requested that Hart take nothing on her claim.

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

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

The arbitrator specifically finds that while he believes Claimant Hart did not understand the risk of the investments, he is not persuaded that the lack of understanding was Respondent Sharp's fault. In addition, evidence was not persuasive that a financial loss occurred. There was no disagreement of the amounts received in payment to her from the funds (including the sums

received from the share sold) and the current value of the shares still owned. The total of these amounts is greater than the amount of her total investment.

### **AWARD**

After considering the pleading, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) session x \$200.00 per session = \$200.00.

The National Association of Securities Dealers, Inc. shall retain the \$75.00 claim filing fee and refund \$100.00 of the \$200.00 hearing session deposit previously deposited by the Claimant, Essie Darlene Hart. Respondent William H. Sharp is liable for and shall pay to the NASD the sum of \$100.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

August 11, 1993

For NASD Use Only

Date of Service of Award: 8-16-93