

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joyce A. Goodman

93-00064

Name of Respondents

Chelsea Street Securities
John E. Irvine, Jr.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 7, 1993, Claimant Joyce A. Goodman, who appeared Pro Se, alleged that she is a 62 year old unemployed woman and on February 2, 1992 she was inappropriately advised to purchase 400 common stock shares of United Heritage by Respondent John E. Irvine, Jr. broker with Respondent Chelsea Street Securities. Claimant further alleged that she was told it was a young growing company with limited liabilities and great potential for growth whereby the money used to purchase the stock was a rollover from an IRA. Claimant contended that she was also advised to purchase 400 shares of Electric & Gas Technology, whereby she wanted annual reports sent to her first but Respondent John E. Irvine, Jr. pressured Claimant not to wait as the price per share was going up quickly. Claimant further contended that when she finally received the financial reports after continually asking for them and they showed that United Heritage Co. was in deep financial trouble and stated there was substantial doubt United Heritage Co. could continue as a growing concern. Claimant asserted that because of Respondents Chelsea Street Securities and John E. Irvine, Jr. unfair and deceptive practices she lost money in her account.

Claimant asserted a Motion to Preclude against Respondent Chelsea Street Securities pursuant to Section 13(d) of the NASD Code of Arbitration Procedure.

Respondent Chelsea Street Securities by and through their counsel L.A. Newlan, Jr. of Newlan & Newlan, Dallas, Texas, maintained that they deny each and every allegation of fact contained in the Statement of Claim.

Respondent John E. Irvine, Jr., who appeared Pro Se, maintained that he did not advise Claimant to purchase shares of either United Heritage or Electric & Gas Technology. Respondent John E. Irvine, Jr. further maintained that at no time did Claimant ask for any kind of Financial Reports and at no point was Claimant a victim of unfair or deceptive business practices but purchased shares based on what her daughter and son-in-law purchased.

RELIEF REQUESTED

Claimant Joyce A. Goodman requested \$4,401.46 in actual damages.

Respondent Chelsea Street Securities requested the claim be denied.

Respondent John E. Irvine, Jr. requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Richard J. Grahm, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 30, 1992, by the Respondent Chelsea Street Securities on April 2, 1993 and by the Respondent John E. Irvine, Jr. on March 1, 1993.

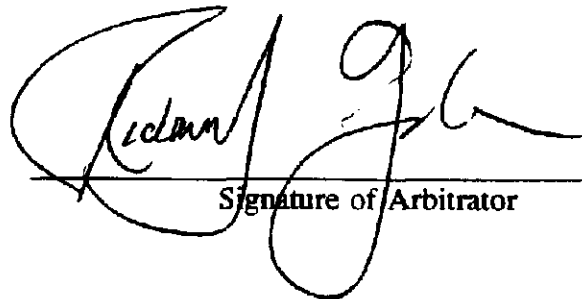
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Claimant's Motion to Preclude is denied.
2. Respondents Chelsea Street Securities and John E. Irvine, Jr. are jointly and severally liable and shall pay to the Claimant Joyce A. Goodman the sum of \$788.95 in damages.
3. Respondents Chelsea Street Securities and John E. Irvine, Jr. are jointly and severally liable and shall pay to the Claimant Joyce A. Goodman simple interest at the rate of 3% per annum from February 25, 1992 to May 12, 1993.
4. The parties shall bear their respective costs.

5. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Joyce A. Goodman shall be retained by the NASD, Inc. Respondents Chelsea Street Securities and John E. Irvine, Jr. and shall pay to the Claimant the sum of \$125.00, as reimbursement.

AFFIRMATION

I, **RICHARD J. GRAHN, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: June 8, 1993

8. Based upon the Statement of Claim, the Responses to the Statement of Claim Rebuttal to the Response to Statement of Claim and the documentary evidence submitted, I find that the Respondents owed to the Petitioner a duty to provide her with all material facts reasonably required by her in considering whether or not to make an investment. I find that the Respondents owed the Petitioner this duty irrespective of the fact that the investment opportunity may have been brought to her attention by her relatives.

I find that had the Petitioner been provided with all material facts regarding the investment in United Heritage Corporation, including the Independent Auditor's Report, dated May 31, 1991, she would not have acquired 400 shares of United Heritage Corporation stock. I find that the Respondents jointly and severally, breached the duty owed to the Respondent, particularly in consideration of the suitability of this investment in light of the Petitioner's age, financial status and the source of investment. As a result, I find the Petitioner is entitled to receive from the Respondents, jointly and severally, the difference between her initial investment (\$1,610.00) and the present value.

The only evidence with which I have been presented regarding that value is at account statement for the period ending 9/25/90, which reflects a value of \$850.00. I also find that the Petitioner is entitled to interest at the rate of 3% per annum

which she would have received on her IRA account from February 2, 1992 to May 12, 1993.

While the Petitioner claims entitlement to the loss of her investment in 400 shares of Electric Gas Technology, I find that she has failed to sustain her burden of proof. No evidence has been presented which could support a finding that the Respondents failed to provide the Petitioner with any material facts concerning this transaction or that she was damaged thereby.

In rendering the decision of this matter I have considered the Petitioner's Motion to Preclude dated March 11, 1993. The answer of the Respondent Chelsea Street Securities, Inc. was served on April 6, 1993. The documents do not reflect when the Respondent was served with a copy of the Statement of Claim, and it is not possible to ascertain whether or not the Answer was timely filed. However, in the event that the answer was untimely filed, given the limited delay and lack of demonstrated prejudice to the Petitioner, a motion to extend time to answer would have been allowed for good cause shown under Rule 13(g).

Based upon this findings and conclusions, the NASD fee shall be assessed against the Respondents.