

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the matter between

Marilyn Schneider

and

No.93-00068

Financial Planning Consultants, Inc.,

Kingsley I. Wright, Sr.

and Frank Gervascio

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**REPRESENTATION OF PARTIES**

Claimant, Marilyn Schneider was represented by Marvin Klamen, Esq., Sole Practitioner, of St. Louis, MO.

Respondents, Financial Planning Consultants, Inc., Kingsley I. Wright, Sr. and Frank Gervascio . were represented by Furmin A. Puricelli, Esq., Sole Practitioner, of Clayton, MO.

**CASE INFORMATION**

Claimant, Marilyn Schneider submitted a Uniform Submission Agreement which was signed on January 25, 1993.

The Statement of Claim was filed on or about January 6, 1993.

The First Amended Statement of Claim was filed on or about June 3, 1994.

The Second Amended Statement of Claim was filed on or about July 26, 1994.

Respondents, Financial Planning Consultants, Inc., Kingsley O. Wright, Sr. and Frank Gervascio, filed a joint Statement of Answer on or about April 1, 1993.

**HEARING INFORMATION**

Pre-hearing Conferences were held on the following dates:

- May 6, 1994 for one (1) session before three arbitrators
- July 12, 1994 for one (1) session before three arbitrators
- June 2, 1995 for one (1) session before one arbitrator

The hearing was held in St. Louis, MO on the following dates:

- December 19, 1994 for two (2) sessions
- December 20, 1994 for two (2) sessions
- January 30, 1995 for two (2) sessions
- August 23, 1995 for two (2) sessions
- August 25, 1995 for two (2) sessions

### **CASE SUMMARY**

Claimant, Marilyn Schneider, alleged that the Respondents, Financial Planning Consultants, Inc., Kingsley O. Wright, Sr. and Frank Gervascio, as representatives of Respondent Financial Planning Consultants, Inc., recommended and sold inappropriate and unsuitable investments, which were inconsistent with Claimant's investment objectives. Claimant alleged that Respondents employed a systematic scheme of misrepresentation in order to receive exceedingly high commissions. Claimant contended that, after establishing a brokerage account, Respondents misrepresented the status, value and suitability of her invested assets, which included common stock, mutual funds and limited partnerships. Claimant further maintained that Respondents wrongly induced her to purchase unsuitable investments including unlisted, unregistered and non-liquid private securities.

Respondents denied any liability to the Claimant. Respondents alleged that at all times Respondents acted in an appropriate and professional manner, made no misrepresentations to the Claimant with regard to her investments and acted in accordance with all applicable rules and regulations. Respondents asserted many affirmative defenses, including, but not limited to, that the claims set forth in the Statement of Claim were, in whole or in part, barred by the applicable Statutes of Limitations, Doctrine of Laches, and/ or by Section 15 of the NASD Code of Arbitration Procedure; that the claims set forth in the Statement of Claim were barred, in whole or in part, by the negligence of Claimant; Doctrine of Waiver; that the losses sought in the Statement of Claim resulted, in whole or in part, from unforeseen market conditions, and are therefore not recoverable by Claimant; Estoppel; and Ratification.

### **RELIEF REQUESTED**

Claimant, Marilyn Schneider, requested an award against the Respondents, Financial Planning Consultants, Inc., Kingsley O. Wright, Sr. and Frank Gervascio, in the amount of \$240,000.00 in actual damages, interest, costs and expenses of arbitration, attorneys' fees and \$450,000.00 in punitive damages.

Respondents requested that the claim be dismissed in its entirety and requested an award against the Claimant, Marilyn Schneider, for costs and attorney's fees.

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

After reviewing the Respondents' Request for a More Definite Statement and related documents and

subsequent to hearing oral arguments on this motion during the pre-hearing conference on July 12, 1994, the Arbitration Panel decided that the Motion was granted in part and directed Claimant to plead with greater specificity and exactitude the amounts of damage claimed and the nature of the actions on the part of the Respondents to include causes of action, amount of damages and dates of acts or omissions. The arbitrators directed Claimant to file an Amended Claim by July 28, 1994.

The Arbitration Panel considered the Respondents, Financial Planning Consultants, Inc., Kingsley O. Wright, Sr. and Frank Gervasio's Motion to Dismiss Pursuant to Section 15 of the NASD Code of Arbitration Procedure and all related submissions, the arbitrators decided to deny their motion on or about December 12, 1994. The Respondents renewed their Motion to Dismiss in March, 1995. After reviewing all relevant documents, the arbitrators decided to defer ruling on the Motion to Dismiss until a later date. At the conclusion of the hearing and after reviewing all submissions, a majority of the arbitrators determined that the Respondents' Motion to Dismiss Pursuant to Section 15 was granted in that the panel would consider only those allegations of wrongdoing which occurred on or after December 30, 1986.

The parties 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 Statement of Claim is hereby denied;
2. The panel orders that the Claimant has the option to liquidate the investments she still owns at the current value listed in Respondent's Exhibit NNN, without regard to prior cash distributions or tax losses allocated to Claimant in prior years. This option is available only for the investments with current values listed on Exhibit NNN. The Claimant may decide to exercise the option on any of the eligible investments and does not have to exercise the option on all or none. The option will expire thirty (30) days after the Claimant receives her copy of this award. The Claimant is required to provide the Respondents with any documents necessary to liquidate the investments. The Respondents are required to accept the instructions and documents from the Claimant, liquidate the investments at the values stated on Exhibit NNN and deliver the proceeds to the Claimant within a reasonable period of time;
3. All requests for relief not specifically granted herein are hereby denied in their

entirety;

4. The parties shall each bear their own respective costs and attorneys' fees except for those costs specifically enumerated herein.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$1000.00 per hearing session with three (3) arbitrators and \$300.00 for each pre-hearing session involving one (1) arbitrator. There were twelve (12) hearing sessions involving three (3) arbitrators x \$1000 plus one (1) pre-hearing session with one arbitrator = \$12,300.00 in forum fees. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the Code, the National Association of Securities Dealers Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimant. The NASD shall retain postponement fees in the amount of \$1000.00 previously deposited with the NASD by the Respondents.

Claimant, Marilyn Schneider is hereby assessed and shall pay to the NASD additional forum fees in the amount of \$5,150.00 Respondents, Financial Planning Consultants, Inc., Kingsley O. Wright, Sr. and Frank Gervascio are jointly and severally assessed, and shall pay to the NASD forum fees in the amount of \$6,150.00. **Fees are payable to the National Association of Securities Dealers, Inc.**

Concurring Arbitrators' Signatures:

Dated:

Richard K. Zerr, Esq.  
Richard K. Zerr, Esq.  
Presiding Chair, Public Arbitrator

December 13, 1995

Timothy M. Kelly, Esq.  
Timothy M. Kelly, Esq., Industry Arbitrator

December 13, 1995

Dissenting Opinion:

Dr. Edward Lawrence held a dissenting view from that of the majority on the issue of Section 15. He believed there was strong evidence of misconduct including misrepresentation, concealment and self-dealing on the parts of Wright, Gervascio and Financial Planning Consultants, Inc. Because of their activities from 1982 through 1988, Dr. Lawrence believed that the Claimant was misled as to

the liquidity and risk of a significant portion of her investments and the magnitude of her losses. The Claimant incurred substantial economic losses as a direct result of the Respondents' actions and misdeeds. Thus, Dr. Lawrence believed Claimant's request for actual and punitive damages should not be time barred by Section 15 under these blatant circumstances.

Dr. Lawrence did concur with the parts of the majority opinion which provide the Claimant the option to liquidate the investments she owns at the values listed in Exhibit NNN, and the parts concerning the parties attorneys fees and expenses and the forum fees.

Dissenting Arbitrator's Signature:

Edward C. Lawrence  
Edward C. Lawrence, Public Arbitrator

December 21, 1995

Date of Service by the NASD: December 27, 1995