

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Elliot Greenberg

93-00388

Name of Respondents

Connecticut Mutual Financial Services  
Kenneth E. Knox

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on February 2, 1993, Claimant Elliot Greenberg, who appeared Pro Se, alleged that Respondent Kenneth E. Knox of Respondent Connecticut Mutual Financial Services recommended VMS Mortgage Investors LP III as the vehicle for his lump sum pension distribution in late 1986 and it is Claimant's belief that this vehicle was unsuitable for fulfilling his financial objectives. Claimant further alleged that Respondent Kenneth E. Knox was acutely aware of his financial resources, goals and above all, his conservative nature in investing. Claimant contended that he and his wife met with Respondent Kenneth E. Knox in early mid 1985, shortly after their marriage, to begin a long-term financial plan. Claimant further contended that at that time, he and his wife had minimal investing knowledge, and relied on Respondent Kenneth E. Knox's knowledge and expertise whereby they trusted him since he was Claimant's wife's employer. Claimant asserted that during their lengthy discussion, he related his desires, always indicating that he and his wife were not risk takers in that their previous investments were in solid performing stocks and municipal bonds with very little risk, and money market accounts along with two small IRA's. Claimant further contended that after the meeting, he invested substantial monies in another VMS (VMS I) partnership and two mutual funds whereby this VMS was designated to become an educational source for any future children and these initial investments represented approximately 60% of their total cash reserves. Claimant further alleged that in late 1986, he again sought Respondent Kenneth E. Knox's advice when the pension plan at his employment was required to make lump sum distributions to all employees, at which time, Respondent Kenneth E. Knox recommended VMS Mortgage Investors LP III as the vehicle whereby no other recommendations were made at that time. Claimant further contended that Respondent Kenneth E. Knox was also aware that this money was the total of his retirement funds at that time and

Claimant now had about 40% of his monies invested in two highly speculative and risky limited partnerships, even though he maintained that he did not want risky or speculative investments. Claimant further asserted that while he accepts responsibility for his investments, it was his expectation that due diligence would have been performed and this lack of due diligence contributed to making this an investment that was not consistent with his investment needs and objectives, thus Respondents Connecticut Mutual Financial Services and Kenneth E. Knox should be held liable for his losses.

In response to the arbitrator's request for additional documentary submission, the Claimant stated that during the time of this transaction his wife, Diane, was self employed on a part-time basis for Respondent Kenneth E. Knox from January 1, 1987 to mid-December, 1989.

Respondents Connecticut Mutual Financial Services and Kenneth E. Knox, by and through their counsel Donald A. Woodbine, Esq. of Vogel, Souls & Woodbine, Providence, RI, maintained that toward the end of 1985, the Claimant Elliot Greenberg invested in the VMS Mortgage Investors LP III through the Respondents and when the Respondent Kenneth E. Knox met with Claimant and his wife, many various alternative investments were discussed, including mutual funds. Respondents further maintained that Respondent Kenneth E. Knox took a full fact finder from Claimant Elliot Greenberg and obtained from Claimant all of the details regarding Claimant's financial means, including his income and all of the other investments Claimant was involved in at the time whereby Claimant's needs, desires and the purpose for the investment in question were all fully discussed. Respondents contended that the Claimant chose to invest in VMS Mortgage Investors LP III, which offered Class A properties in multiple locations and at that time, it was well known that investment in such properties was not an undue risk whereby Respondent Kenneth E. Knox himself invested in VMS Mortgage Investors LP III at that time. Respondents further contended that at the time of the Claimant's meeting with Respondent Kenneth E. Knox, the investment in question was fully discussed and explained, and the Claimant was provided with a prospectus for the investment, which he read at the meeting. Respondents contended that at the time of the investment, the Claimant was employed in a managerial capacity with the Rhode Island Housing and Mortgage Financial Company, which deals in the sale of low-income housing mortgages. Respondents further contended that Claimant admits in his Statement of Claim that all of the transactions occurring between himself and the Respondents occurred in 1985 and 1986, whereby Claimant's claims are time barred under the NASD's Code of Arbitration Procedure pursuant to Section 15 which states that Claimant's claims are not eligible for submission to arbitration, as more than 6 years have elapsed from the occurrence giving rise to the dispute in question. Respondents asserted that all investments involve some element of risk and Claimant was made fully aware of this during his meeting with Respondent Kenneth E. Knox and the fact that the real estate market subsequently declined was clearly unforeseeable at the time the investment was made.

In response to the Arbitrator's request for additional documentary submission, the Respondents stated that Claimant's wife was a secretary to the Brokerage Director at Respondent Connecticut Mutual Financial Services while attaining her MBA. She then became Respondent Kenneth E.

Knox's office manager in September of 1982. She filled that position through December, 1986 and worked part-time after that for approximately six months.

**RELIEF REQUESTED**

Claimant Elliot Greenberg requested the sum of \$10,000.00 in actual damages.

Respondents Connecticut Mutual Financial Services and Kenneth E. Knox requested the claim be dismissed.

**AWARD**

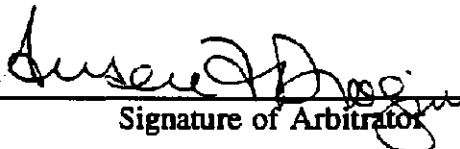
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Susan F. Drogin, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 29, 1993, by the Respondent Connecticut Mutual Financial Services on March 29, 1993 and by the Respondent Kenneth E. Knox on April 6, 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 claim of Claimant Elliot Greenberg against Respondents Connecticut Mutual Financial Services and Kenneth E. Knox is dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Elliot Greenberg shall be retained by the NASD, Inc.

AFFIRMATION

I, SUSAN F. DROGIN, 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.

  
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Signature of Arbitrator

DATE OF DECISION: December 30, 1993