

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Martha E. Hill

93-00619

Name of Respondents

Dominick Investor Services Corp. (n/k/a Dominick & Dominick, Inc.)  
DeRand/Pennington/Bass  
Tamyl Dunwoody

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**REPRESENTATION**

For Claimant Martha E. Hill ("Claimant"): appeared pro se

For Respondent Dominick Investor Services ("Dominick"): William J. Bethune,  
Esq. of the law firm of Marsh Fleischer & Quiggle

For Respondent DeRand/Pennington/Bass ("DeRand"): Mr. B. Eric Sivertsen,  
Senior Vice-President Derand/ Pennington/ Bass, Inc.

For Respondent Tamyl Dunwoody ("Dunwoody"): appeared pro se

**CASE INFORMATION**

Statement of Claim filed: February 18, 1993  
Claimant's Submission Agreement signed on: February 16, 1993  
Amended Statement of Claim filed: June 21, 1993

Statement of Answer filed by Dominick on: April 30, 1993  
Dominick's Submission Agreement executed on: March 9, 1993

Statement of Answer filed by DeRand on: May 3, 1993  
DeRand's Submission Agreement executed on: April 28, 1993

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Statement of Answer filed by Dunwoody on: July 21, 1993  
Dunwoody's Submission Agreement executed on: July 15, 1993

### **HEARING INFORMATION**

Hearing Dates/Sessions: May 18, 1994 - two sessions

Hearing Location: NASD Office - Washington, D.C.

### **CASE SUMMARY**

Claimant alleged that this case involves breach of fiduciary responsibility owed to Claimant and that unsuitable investments were made by Dunwoody while she was employed at DeRand and then Dominick.

Claimant alleged that she was an unsophisticated investor and a widow with two children seeking a safe investment which would produce income and some growth but preserve her principal. Claimant alleged Dunwoody knew of these objectives and that her only source of income at the time was a government annuity (approx. \$13,500). Claimant alleged that Dunwoody recommended investments that Dunwoody stated would provide safe income. Claimant alleged that she trusted Dunwoody to provide her with investments that were suitable for her and met her investment objectives. Claimant alleged that based on her trust in Dunwoody, she transferred her account when Dunwoody switched employment from DeRand to Dominick. Claimant alleged that Dunwoody lost \$29,335 of her principal by making unsuitable investments that did not meet Claimant's goals and objectives. Claimant alleged that the limited partnership investments recommended by Dunwoody were high risk and had a great potential for loss, contrary to their representation as safe and good income producers. Claimant alleged that Dunwoody told her Southmark Growth Fund would provide 'guaranteed income', which in fact lost \$7,927.52 of Claimant's principal. Claimant further alleged that Dominick, DeRand and Dunwoody (collectively referred to as "Respondents") took on a fiduciary responsibility to Claimant, which Respondents failed to perform.

Respondents denied each and every allegation of wrongdoing asserted by Claimant. The Respondents further maintained that Claimant filled out the proper documentation which indicated that trading in the account met Claimant's st

investment objective and suitability requirements. Respondents maintained that Claimant's investments were suitable individually and when examined together as a portfolio. Respondents maintained Claimant had requisite sophistication and suitability to make investment choices. Respondents maintained that Claimant understood the risks and rewards associated with each of her investments. Respondents DeRand and Dominick maintained Claimant has not suffered actual losses in her account.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$48,490 be awarded. Claimant bases this total on the following: the reimbursement of the lost portion of her principal investment for the limited partnerships sold (\$29,335); plus 8% interest per year since 1987 (\$18,635); and all costs of the arbitration (\$520).

Respondents requested dismissal of the claim in its entirety.

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

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 originals remain on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Claimant was only partially aware of risks involved in the investment strategies implemented for her account while serviced by the Respondent Firms. The total composition for her portfolio at both Respondent firms was unsuitable for the Claimant primarily in terms of the illiquidity of a portion of the portfolio in respect of her needs and objectives.

1. To compensate the Claimant for lack of account performance she is to be

awarded TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$2,500); inclusive of interest from Dominick.

2. To compensate the Claimant for lack of account performance she is to be awarded SIX THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$6,500); inclusive of interest from DeRand.

3. Claimant shall have no recovery of damages from Dunwoody.

4. All parties shall bear their respective costs and attorney's fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure ("Code"), the following Forum Fees are assessed.


2 session X \$400 = \$ 800

Forum Fees Assessed Against: Claimant is assessed forum fees in the amount of \$400; however, she is entitled to offset this amount with her hearing session deposit of \$400 previously deposited so that no more monies are due from Claimant. Respondents DeRand and Dominick are jointly and severally assessed forum fees in the amount of \$400.

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

Concurring Arbitrator's Signature

Name

  
Jeffrey S. Battles

Public/Industry

INDUSTRY

NASD DATE OF DECISION : June 20, 1994

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Concurring Arbitrator's Signature  
Name

David A. Lipton, Esq.

Public/Industry

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Name

Paul A. Yates  
Paul A. Yates

Public/Industry

Public

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