

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James H. Allen and Alice Allen
James H. Allen, IRA

93-00733

Name of Respondents

Professional Planning Capital Corp.
Professional Planning Associates, Inc.
Jeremy A. Klainer
Jane Boccieri Taves

REPRESENTATION

For Claimants James and Alice Allen ("Claimants") appeared James S. Grossman, Esq. of the law firm of Smallwood-Cook, Stout & Grossman located on Rochester, New York.

For Respondents Professional Planning Capital Corp. ("PPC"), Professional Planning Associates, Inc. ("PPA"), Jeremy A. Klainer ("Klainer") and Jane Boccieri Taves ("Taves") appeared Julia A. Garver, Esq. and William G. Bauer, Esq. of the law firm of Woods, Oviatt, Gilman, Sturman & Clarke located in Rochester, New York.

CASE INFORMATION

The Statement of Claim was filed on February 23, 1993. The Submission Agreement of James H. Allen and Alice Allen, in their capacity as joint tenants, was signed on February 23, 1993 and James H. Allen's Submission Agreement for the Individual Retirement Account (IRA) was signed on March 26, 1993.

A Joint Statement of Answer was filed by Respondents PPC, PPA, Klainer and Taves on May 28, 1993. Respondent PPC's Submission Agreement was signed on May 27, 1993; Respondent PPA's Submission Agreement was signed on May 27, 1993; Respondent Klainer's Submission Agreement was signed on May 27, 1993; and Respondent Jane Boccieri's Submission Agreement was signed on May 28, 1993.

Hearing Dates/Sessions: May 26, 1994 - 2 Sessions
 May 27, 1994 - 1 Session

The hearing was held at the Hyatt Regency located at 2 Fountain Plaza, Buffalo, New York.

CASE SUMMARY

Claimants alleged that in 1986, prior to deciding to retire, Claimant James Allen, an individual with minimal investment experience, met with Respondent Taves seeking advice as to financial and retirement planning. Claimants also alleged that Respondents were paid a yearly fee for financial planning advice. Claimants further alleged that Claimant James Allen informed Respondents of his hope to retire and stressed the need for a conservative approach and safe investments of his retirement funds.

Moreover, Claimants alleged that Claimant James Allen initially invested \$303,694.00 of his retirement funds in an individual retirement account through Respondents; that on or about March 4, 1987, Respondents advised and caused Claimants to purchase 3000 units of VMS Mortgage Investors LP III (VMS III) for \$30,000.00; that Respondents did not advise James Allen that VMS III was a Limited Partnership, and of the risks associated therewith; and that the commission received by Respondents was above the normal commission received by individuals or entities in their positions. Furthermore, Claimant James Allen alleged that the VMS III prospectus indicated substantial risk factors which cause the investment to be inappropriate for retirees needing to preserve principal in order to finance their retirement upon investment income.

In addition, Claimant James Allen alleged that on or about October 20, 1987, Respondents advised and caused Claimant James Allen, through his individual retirement account to purchase 2500 units of VMS Strategic Land Fund II (VMS II), a limited partnership for \$25,000.00. Claimant James Allen also alleged that Claimants never received a prospectus for VMS II; that this investment resulted in a higher commission than normally received by brokers; and that the VMS prospectus indicates substantial risk factors which cause the investment to be inappropriate for retirees needing to preserve principal to finance their retirement. Further, Claimants alleged that on or about August 12, 1988, Respondents caused Claimants to invest \$10,000.00 in 196 Rockway Parkway Associates, a high risk real estate limited partnership.

The Claimants stated that Respondents never explained to Claimants the high risk nature of the securities in which they invested \$65,000.00.

Claimants contended that Respondents recommendations regarding investments were completely unsuitable for a retired couple in the Claimants financial circumstances. Moreover, Claimants alleged that Respondents are liable under theories of failure to comply with suitability requirements, misrepresentation of material facts and that Respondents Professional Planning failed to properly supervise Respondent Taves pursuant to Section 20(a) of the Securities Exchange Act of 1934, under NASD Rule 27 and the common law of New York. Claimants also alleged that Respondents were liable under theories of fraud, breach of fiduciary duty, professional malpractice, breach of contract, negligence and federal securities law.

Respondents denied all allegations of wrongdoing and requested that the statement of claim be dismissed. Respondents maintained that Claimant James Allen is a highly intelligent, well educated individual, fully capable of reading and understanding written materials, analyzing and evaluating information and making his own decisions. Further, Respondents maintained that Claimants entered into an agreement with PPA on November 17, 1986 and agreed to pay PPA a fee for financial planning services. At that time, Respondents maintained, Claimants informed Respondent Taves of their assets and advised Taves that their investment objectives were income and growth.

Moreover, Respondents maintained that Claimant James Allen informed Respondent Taves on November 19, 1986 that he planned on retiring and requested advice concerning his options with respect to the distribution of his retirement funds; that Taves recommended that Claimant James Allen select a lifetime annuity distribution rather than lump-sum distribution; and that on January 12, 1987, Claimant contacted Taves and indicated that he had decided, against Taves' recommendation, to take the lump-sum distribution of the retirement funds.

Further, Respondents maintained that February 19, 1987, Claimant James Allen advised Respondent Taves that he wanted to invest all of the funds in mutual funds; that Claimant James Allen had researched a number of mutual funds on his own and told respondents those were the funds he wanted to invest in; that Claimant had selected a substantial investment in equities; and that Respondent Taves recommended that Claimants consider VMS Mortgage Investors L.P. III, to shift some of the funds out of the stock market. Respondents maintained that on March 4, 1987, Claimants invested \$30,000.00 in VMS III.

Respondents also maintained that on August 4, 1987, Claimant met with Respondent Taves and expressed concern that so much of his portfolio was invested in the stock market through the mutual funds he had selected; that he would like to invest more of his portfolio in VMS programs; and that on October 20, 1987, Claimant invested \$25,000.00 in VMS II. Further, Respondent maintained that after Claimant expressed concern about the income taxes he was paying, Respondent advised Claimant of a tax credit investment Limited Partnership known as 196 Rockway Associates, in which Claimants invested \$10,000.00.

Respondents contended that the investments in VMS III, VMS II, and 196 Rockway Associates were suitable and appropriate investments; that each of the investments made by Claimants was discussed at length by respondents with claimants before made; and that Claimant James Allen attended seminars at which the investments, or substantially similar investments, were thoroughly discussed by representatives of the issuers.

Respondent maintained that Claimants have provided no evidence of any damages from their investment in 196 Rockway Associates; have failed to mitigate any alleged damages in connection with their investments in VMS III and VMS II; that VMS III and VMS II were listed on NASDAQ and were freely transferable; that arbitrators have no authority to award punitive damages; and that the statutory and negligence claims are barred by the Statute of Limitations.

RELIEF REQUESTED

Claimants requested judgment against each of the respondents, joint and severally, as follows:

1. For damages to Claimants' investment accounts in the sum of at least \$64,658.00 (46,000 diminishment in value plus lost interest @ 9% per annum from 1989).
2. For exemplary damages in the sum of \$25,000.00
3. For all Claimants' costs, expenses and disbursements including reasonable attorneys fees.
4. For such other and proper relief as the arbitration panel deems just and proper.

Respondents requested that all claims against them be dismissed; that they be awarded their attorneys' fees and other costs incurred in defending this proceeding; and such other and further relief as the panel may deem appropriate.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents be and hereby are dismissed in their entirety.
2. All claims against Respondents for exemplary damages be and hereby are dismissed.
3. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

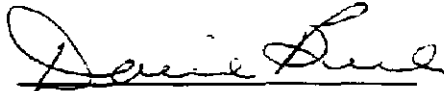
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

3 hearing sessions x \$500.00 = net \$1,500.00 due.

Respondents be and hereby are liable, jointly and severally, and shall pay to the NASD the sum of \$1,500.00.

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

Concurring Arbitrators' Signatures
Name


David Buch, Esq.
Public Arbitrator - Chairperson

Vincent J. Muffoletto
Public Arbitrator

Michael P. Hennigan
Industry Arbitrator

Date of Decision: July 21, 1994

STATE OF New York
COUNTY OF Erie

On this 13th day of July, 1994, before me personally appeared David Buch known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

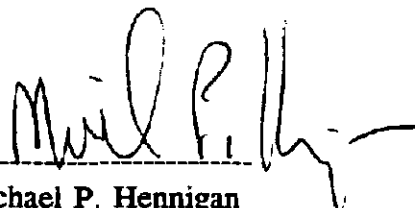
Margaret M. Doskoz

MARGARET M. DOSKOCZ
Notary Public, State of New York
Qualified in Erie County
My Commission Expires December 8, 1994

Concurring Arbitrators' Signatures
Name

David Buch, Esq.
Public Arbitrator - Chairperson

Vincent J. Muffoletto
Public Arbitrator



Michael P. Hennigan
Industry Arbitrator

Date of Decision: July 21, 1994

STATE OF

New York

COUNTY OF

Erie

On this 9 day of July, 1994, before me personally appeared Michael P. Hennighan known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Gail A. Samol

GAIL A. SAMOL

Notary Public in the State of New York

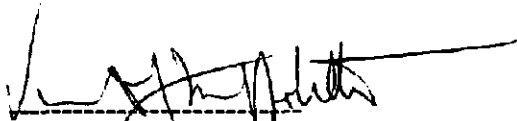
Registration No. 4667366

ERIE COUNTY

Commission Expires January 31, 1995

Concurring Arbitrators' Signatures
Name

David Buch, Esq.
Public Arbitrator - Chairperson



Vincent J. Muffoletto
Public Arbitrator

Michael P. Hennigan
Industry Arbitrator

Date of Decision: July 21, 1994