

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

Francis Vogt, Betty Vogt, and  
Elizabeth Ann Janes,  
Claimants,

v.

No. 93-00771

Conservative Financial Services, Inc., and  
William H. Sharp,  
Respondents

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**REPRESENTATION OF PARTIES**

For Claimants, Francis Vogt, Betty Vogt, and Elizabeth Ann Janes ("Claimants"): John J. Miller, Esq., and Barry D. Estell, Esq., of Nygaard & Miller, Overland Park, Kansas.

For Respondents, Conservative Financial Services and William H. Sharp ("Respondents"): Jerome F. Raskas, Esq., Mark D. Sadow, Esq., and Susan D. Wirthlin, Esq., of Raskas, Ruthmeyer, Pomerantz, Wynne, Garvaglia & Sussman, Saint Louis, Missouri.

**CASE INFORMATION**

Claimants' Statement of Claim was filed on or about March 1, 1993.

Claimants' Submission Agreements were signed on February 17, 1993, and March 30, 1993.

Respondents' Statement of Answer was filed on or about June 29, 1993.

Respondents' Submission agreements were signed on June 28, 1993.

Claimants' Amended Statement of Claim was filed on or about August 23, 1993.

Respondents' Answer to the Amended Statement of Claim was filed on or about September 10, 1993.

**HEARING INFORMATION**

Pre-hearing Conference date: January 6, 1994. One (1) session.

Hearing date: January 27, 1994. Two (2) sessions.  
January 28, 1994. Two (2) sessions.  
April 21, 1994. Two (2) sessions.  
April 22, 1994. Three (3) sessions.

Hearing Location: Kansas City, Missouri.

**CASE SUMMARY**

Claimants alleged that the Respondents: Violated Federal and Missouri Securities acts; violated the Missouri Merchandising Practices Act; engaged in fraud and misrepresentations in relation to the Claimants; acted negligently in their evaluation and sale of speculative securities to the Claimants; breached their contract with the Claimants; violated NASD Rules; breached their fiduciary duty owed to the Claimants; and violated federal RICO laws, 18 U.S.C. 1341, and 1343. The allegations arose out of transactions in Ames Department Store's convertible debentures.

Respondents, unless otherwise admitted in their Answer, denied each and every allegation in the Statement of Claim. In addition, Respondents asserted that the first claim should be dismissed as the claim had been filed after the statute of limitations had run under both the Federal and Missouri Securities Act. Respondents also requested that Claimants' Missouri Merchandising Practices Act, fraud, misrepresentation, and violation of NASD rules claims should be dismissed on the grounds that: Securities do not fall within the definition of "goods and services"; Claimants directed transactions in their accounts; and that alleged violations of rules of various industry organizations do not give rise to private causes of action.

**RELIEF REQUESTED**

Claimants requested that the panel for compensatory damages in the amount of \$126,800.69, interest of \$37,702.80, their attorneys' fees and costs of this proceeding, punitive damages in the amount of \$300,000.00, and such other relief as the panel believed appropriate.

Respondents requested that they be dismissed from this claim at Claimants' costs, and for such other and further relief as this panel deemed just and proper.

**OTHER ISSUES CONSIDERED & DECIDED**

On August 3, 1993, Respondents filed a Motion for Change of Hearing Location. After a response was obtained from the Claimants, the motion and the response were forwarded to the undersigned panel. After review of the relevant documents, and deliberation, the panel denied to change the situs of the hearing set for this arbitration.

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 original(s) 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. Claimants' claims for punitive damages, interest and attorneys' fees are hereby denied and dismissed with prejudice.
2. Respondents Conservative Financial Services, Inc. and William H. Sharp are, and each of them, jointly and severally liable for, and shall pay to Claimants Francis Vogt and Betty Vogt the sum of \$79,639.94 as satisfaction of their claims herein.
3. Respondents Conservative Financial Services, Inc. and William H. Sharp are, and each of them, jointly and severally liable for, and shall pay to Claimant Elizabeth Ann Janes the sum of \$4,306.25 as satisfaction of her claims herein.
4. The monetary Awards to the Claimants are conditioned upon the tender to the Respondents of all of the bonds presently owned by the Claimants.

**OTHER COSTS**

Each party shall bear its own costs associated with this arbitration, including attorneys' fees, except as set forth more fully below.

**FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

1 pre-hearing conference session @ \$300.00 per session = \$300.00  
9 hearing sessions @ \$750.00 per session = \$6,750.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall RETAIN the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimants.

Additional Forum Fees in the amount of \$3,525.00 are assessed jointly and severally against the Respondents.

Additional Forum Fees in the amount of \$2,775.00 are assessed jointly and severally against the Claimants.

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

**CONCURRING ARBITRATORS**

Dated:

Name:

June 2, 1994

Michael D. Fitzgerald/s/  
Michael D. Fitzgerald  
Presiding Chair  
Public Arbitrator

June 6, 1994

Sidney P. Keltner/s/  
Sidney P. Keltner  
Public Arbitrator

June 9, 1994

Marshall E. Talbot /s/  
Marshall E. Talbot  
Industry Arbitrator

Date of Service by the NASD: 6-13-94