

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**In the Matter of the Arbitration Between**

**Name of Claimants**

**Lawrence A. & Elizabeth N. Holstrom**

**93-00790**

**Name of Respondent**

**Daniel L. Holman**

**REPRESENTATION**

**For Claimants:** Lawrence A. Holstrom and Elizabeth N. Holstrom ("Holstroms") were represented by Laurence S. Schultz, Esq. of Driggers, Schultz, Herbst & Paterson, located in Troy, Michigan.

**For Respondent:** Daniel L. Holman was represented by Robert J. Hahn, Esq. of Cummings, McClorey, Davis & Acho, P.C., located in Farmington Hills, Michigan.

**CASE INFORMATION**

**Statement of Claim filed: March 3, 1993.**

**Claimants' Submission Agreement signed on: January 12, 1993.**

**Statement of Answer filed by Respondent on: April 30, 1993.**

**Respondent's Submission Agreement signed on: May 4, 1993.**

**HEARING INFORMATION**

**Pre-Hearing Conference: None Held.**

**Hearing Dates/Sessions: September 15, 1994 for Two (2) sessions;**

September 16, 1994 for Two (2) sessions.

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Hearing Location: Southfield, Michigan.

### **CASE SUMMARY**

Claimants alleged that Respondent Holman recommended and sold to Claimants securities which were unsuitable given their investment experience and objectives. The Claimants specifically alleged as follows:

1. In 1987, Claimants met with Holman to invest their savings of approximately \$100,000.00. Claimants informed Holman of their lack of investment experience and their limited assets. The Holstroms further stated that they desired conservative investments which would preserve their principal and generate retirement income;
2. Holman prepared a retirement plan for the Holstroms which stated that preservation of capital was one of its primary objectives. However, Holman caused the Claimants to invest their entire retirement account in high risk, illiquid securities, including an additional \$80,000.00 which they received from a land contract they owned. Claimants had no knowledge of the nature of the investments and relied completely upon Holman;
3. The high-risk investments which Holman bought for Claimants and falsely represented to be conservative and appropriate for Claimants retirement included: Cardinal Industries, Inc., Ashgrove Apartments of Sterling Heights II, Ltd. ("Cardinal") which subsequently filed for Chapter 11 Bankruptcy and ceased all distributions; Angeles Mortgage Partners, Ltd. ("Angeles") which filed for bankruptcy; Centrevest Corp. Real Estate ("Centrevest") which went out of business; and National Bond Fund, ("NBF") a risky junk bond fund;
4. Despite the risky nature and financial troubles of these investments, Holman repeatedly assured Claimants that there were no problems with their investments, he was tracking their investments and he was also invested in these partnerships.

Based upon the above allegations, the Holstroms asserted claims for breach of fiduciary duty; misrepresentation and deceptive practices; violation of Section 12(2) of the Securities Act of 1933; Section 410(a)(2) of the Michigan Uniform Securities Act; Section 3(1)(a), (b)(b), and (c)(c) of the Michigan Consumer Protection Act; Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, common law fraud and common law negligence, violation of Article III, Section 2

& 27 of the NASD Rules of Fair Practice; Article III, Section 18 of the NASD Rules; and breach of contract.

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Respondent David Holman denied the maternal allegations of the Statement of Claim alleging that:

1. All investments were purchased by the Holstroms in accordance with security industry guidelines. For all securities recommended, the Holstroms were given prospectuses and/or memoranda, or were publicly traded issues. There were numerous and lengthy discussions about the nature of the investments, including risk, performance history, and effect of market conditions, and the portfolio was planned to watch their primary income goal. Furthermore, many of the investments required signatures stating that investors had received prospectuses, that they met suitability requirements and relied on their own investment experience;

2. The Holstroms' account was broadly diversified with no more than fifteen (15%) per cent in any one investment and twenty three (23%) per cent in a U.S. Government Securities Fund; eighty eight (88%) per cent of the investments of the proposed portfolio were classified as average to low risk and were liquid;

3. In 1992, the Claimants filed a complaint with the NASD in which they made allegations almost identical to those made in this action. After reviewing this detailed complaint, the NASD replied that no action was warranted on the activities of Holman in relation to the Holstrom account;

4. The Holstroms were sophisticated investors who understood the nature of and risk of investments. Claimants disclosed that they possessed a net worth of over \$300,000.00. Mrs. Holstrom invested \$27,000.00 in a portfolio of stocks for her employer Stock Saving Plan and held her entire IRA portfolio in a stock investment fund with an above average risk rating. The Claimants were joint tenants of a brokerage account and held \$15,000 in a municipal bond fund; they also owned a partnership interest of \$80,000 in a rental real estate condominium;

5. At the time the investments were made Cardinal had an established record of investor satisfaction and performance; furthermore, the general partner, and not the limited partnership, was involved in the Chapter 11 Bankruptcy proceedings. Angeles, classified as a medium-low risk investment, had guaranteed a 10% return for 5 years which met the Claimants objective of high current income and was considered one of the most reliable real estate and mortgage investments at the time. Both Centrevest and NBF were suitable investments which also met the

investment objectives of the Claimants and met their approval as well.

6. Any losses sustained by the Claimants are the result of unforeseen market fluctuations and are not the Respondent's responsibility.

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### **RELIEF REQUESTED**

Claimants requested entry of an award against Respondent for damages in the amount of \$70,655.00 plus interest, costs, and attorneys' fees, including attorneys' fees awarded in accordance with Section 410 of the Michigan Blue Sky Law.

Respondent requested that this matter be dismissed without further action.

### **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 signed Award conformed copies of the Award while the originals remain on file with the NASD. conformed copies of the Award were liquidated.

### **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:

1. Respondent Daniel L. Holman is liable for and shall pay to Claimants Lawrence A. Holstrom and Elizabeth N. Holstrom the sum of \$62,000.00 as damages;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. All relief requests not specifically granted are hereby denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) Hearing sessions x \$500.00 per session = \$2,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and the \$500.00 hearing session deposit previously deposited by the Claimants, Lawrence A. Holstrom and Elizabeth N. Holstrom. Claimants Laurence A. Holstrom and Elizabeth N. Holstrom are liable for and shall pay to the NASD additional forum fees in the sum of \$500.00. In addition, Respondent Daniel L. Holman is liable for and shall pay to the NASD forum fees

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in the sum of \$1,000.00.

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

#### Concurring Arbitrators' Signatures

Name

Date

/s/ Barry Goldman, Esq.

October 14, 1994

Barry Goldman, Esq.

Barry Goldman, Esq.

Public Arbitrator

Public Arbitrator

Chairperson

Chairperson

/s/ A. Robert Bliven

October 14, 1994

A. Robert Bliven

Public Arbitrator

/s/ Rose C. Ruble

October 21, 1994

Rose C. Ruble

Industry Arbitrator

For NASD Use Only

Date of Decision: October 27, 1994