

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Margaret C. Spaulding, Joseph P. O'Connell and James
Weber, as Co-Trustees of the Helen Spaulding Trust

93-00797

Name of Respondents

Mutual Service Corporation;
Pacific Equities Network;
River North Securities;
Coleman Richards Equity Inc.;
Carol A. Holesha; and
Charles J. Richards

REPRESENTATION

For Claimant: Margaret Spaulding, Joseph P. O'Connell and James Weber, as Co-Trustees of the Helen Spaulding Trust ("Spaulding") were represented by Warren Radler, Esq. and Ami Storin, Esq. of Rivkin Radler & Kremer, located in Chicago, Illinois.

For Respondent: Mutual Service Corporation ("Mutual Service") and Pacific Equities Network ("Pacific Network") were represented by Michael H. Moirano, Esq. of Nisen & Elliott, located in Chicago, Illinois. Carol Holesha ("Holesha") was represented by Kevin J. Young, Esq. of Clausen Miller Gorman Caffrey & Witous, located in Chicago, Illinois. River North Securities did not appear. Coleman Richards Equity Inc., and Charles J. Richards were represented by Peter J. Arnold, Esq. of Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: March 2, 1993.

Claimant's Submission Agreement signed on: March 10, 1993.

Statement of Answer filed by Respondent Pacific Equities Network on: May 28, 1993.

Respondent, Pacific Equities Network's Submission Agreement signed on: April 7, 1993.

Statement of Answer filed by Respondent Mutual Service Corporation on May 28, 1993.

Respondent Mutual Service Corporation's Submission Agreement signed on: March 26, 1993.

Statement of Answer was filed by Respondent Carol Holesha on May 27, 1993. Submission Agreement of Respondent Carol Holesha was signed on April 13, 1993.

HEARING INFORMATION

Pre-Hearing Conference: April 12, 1996 for One (1) session with staff.
Hearing Dates/Sessions: March 16, 1994 for One (1) session;
March 17, 1994 for Two (2) sessions;
March 18, 1994 for Two (2) sessions;
May 24, 1994 for Two (2) sessions;
May 25, 1994 for Two (2) sessions;
May 26, 1994 for Two (2) sessions;
June 23, 1994 for Two (2) sessions; and
May 22, 1996 for One (1) session.
Hearing Location: Chicago, Illinois

CASE SUMMARY

Spaulding alleged that Holesha recommended and purchased investments which were unsuitable for Claimant's conservative investment objectives. Claimants further alleged that Coleman Richards Equity, Inc., Charles J. Richards, River North Securities, Mutual Service, and Pacific Network were also responsible for the unsuitable investments which were purchased for their account. Claimants alleged that Holesha purchased high risk and illiquid limited partnerships in real estate, leasing and oil and gas ventures. In addition, Claimants alleged that the value of the limited partnerships were misrepresented to them. Based upon these allegations, Claimant asserted claims for violation of the Securities and Exchange Act of 1934, Regulation 10(b)(5) and the NASD Rules of Fair Practice; common law negligence; common law fraud by Holesha and Mutual Service; and breach of fiduciary duty.

Respondent Pacific Network asserted that they had little or no connection to the arbitration. Pacific Equities further stated that claimants never opened an account with them, never made an investment through them and never communicated with any agent or employees and that it did not, directly or indirectly, offer or sell any investments to the claimants.

Respondent Mutual Service stated that they could not be held liable for acts or transactions which occurred prior to the time that it had any connection or contact with the claimants. Mutual Service further stated that of the investments made by the claimant while they had accounts at Mutual Service, none were unsuitable and that, at all times, they acted in good faith.

Respondent Holesha denied that the claims were eligible for NASD Arbitration pursuant to Section 15 of its Code. Holesha further stated that she purchased a variety of high quality limited partnership investments of their portfolio at claimant's request and also to diversify their portfolio, provide an income stream, and decrease the tax liability exposure faced on the mutual fund accounts.

RELIEF REQUESTED

Claimants requested compensatory and punitive damages in the amount of \$1,000,000.00.

Respondent Pacific Network requested that the claim against them be denied and dismissed. Respondent Mutual Service also requested that the claim against them be denied and dismissed. Respondent Holesha

requested that the claim be denied.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Holesha filed a Motion to Dismiss the claim pursuant to Section 15 (now Section 10304) of the Code of Arbitration Procedure. Respondents Mutual Service and Pacific Network joined in the Motion. Claimants filed a response. The Director of Arbitration ruled that claims regarding any purchases made prior to March 2, 1987 would be permitted to go to the Panel, but only as to the allegations of wrongdoing made after March, 2 1987. All allegations of wrongdoing prior to this date relating to these purchases were ineligible for arbitration. Respondents reasserted this issue with the panel. The arbitrators ruled that the Director's decision would remain.

Upon review of the file, the panel determined that Respondents River North Securities, Charles J. Richards, and Coleman Richards Equity Inc., had not been properly served with the Statement of Claim pursuant to Section 13 and 25 of the NASD Code of Arbitration Procedure (now Sections 10302 and 10314 respectively). The panel also determined that these Respondents did not received due notice of the hearing as required under Section 26 (now Section 10315) of the Code and therefore, the Panel dismissed Respondents River North Securities, Charles J. Richards, and Coleman Richards Equity, Inc. from the arbitration without prejudice.

Respondent Pacific Network was dismissed with prejudice by the panel during the hearing.

Pursuant to correspondence dated October 10, 1995, the arbitration award entered by the Panel on September 24, 1994 was vacated and remanded by order of the District Court for the Northern District of Illinois for consideration of the claims that related to securities purchased after March 2, 1987, after claims related to securities purchased prior to that date were found not arbitrable. After hearing and post-hearing submissions, the Panel has made its determination as asserted in the award section below.

The parties present at the hearing 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 agreed to received conformed copies of the award while the originals remained on file with the NASD.

AWARD

After considering the pleading, 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. Respondents Carol Holesha and Mutual Service Corporation are jointly and severally liable for and shall pay to the Claimant, Margaret Spaulding only, damages in the amount of Seventeen Thousand Eight Hundred Nineteen Dollars (\$17,819.00);
2. Respondents Carol Holesha and Mutual Service Corporation are jointly and severally liable for and shall pay to the Claimant, the Helen Spaulding Trust only, damages in the amount of Fifteen Thousand Fifty Three Dollars (\$15,053.00);

3. In addition, Respondent Carol Holesha is individually liable for and shall pay to the Claimant, Margaret Spaulding, damages in the amount of Seven Thousand Ninety Nine Dollars (\$7,099.00);
4. Furthermore, Respondent Carol Holesha is individually liable for and shall pay to the Claimant, Helen Spaulding Trust, damages in the amount of Twenty Thousand Eight Hundred Fifty One Dollars (\$20,851.00);
5. Claimants' request for punitive damages is denied;
6. Respondents Carol Holesha and Mutual Services Corporation are jointly and severally liable for and shall pay to the Claimants, Margaret Spaulding and the Helen Spaulding Trust, attorneys' fees in the amount of Ten Thousand Dollars (\$10,000.00). In deciding to award attorneys' fees, the Panel considered the arguments presented by the parties and determined that authority existed for and award of Attorneys' fees to the Claimants;
7. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated herein; and
8. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, Claimant Margaret Spaulding is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$2,750.00 for forum fees assessed pursuant to the award of September 24, 1994. In addition, Claimant Helen Spaulding Trust is liable for and shall pay to the NASD Regulation, Inc. the sum of \$2,750.00 assessed as forum fees pursuant to the award of September 24, 1994. Respondent Carol Holesha and Mutual Services Corporation are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$1,000.00 for forum fees for the One (1) Session held on May 22, 1996.

Concurring Arbitrators' Signatures

Name	Date
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<u>/s/ Champ W. Davis, Jr., Esq.</u> Champ W. Davis, Jr., Esq. Public Arbitrator/Chairperson	<u>December 6, 1996</u>
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<u>/s/ Jacques F. Heilingoetter, Jr., Esq.</u> Jacques F. Heilingoetter, Jr., Esq. Public Arbitrator	<u>December 4, 1996</u>
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<u>/s/ Scott W. Turner</u> Scott W. Turner Industry Arbitrator	<u>December 4, 1996</u>
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