

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

---

**In the Matter of the Arbitration Between**

**Name of Claimants**

Lorna Middendorf; Alloran, Inc.; SEP-Lorna  
Middendorf of Alloran, Inc.

93-01329

**Name of Respondent**

Paula Brown, n/k/a Paula Brown Studaker

---

**REPRESENTATION**

For Claimants: Lorna Middendorf ("Middendorf"); Alloran, Inc. ("Alloran"); and SEP-Lorna Middendorf of Alloran, Inc. ("SEP") were represented by Walter L. Baumgardner, Esq. of Musilli, Baumgardner, Wagner & Parnell, located in St. Clair Shore, Michigan.

For Respondent: Paula Brown, now known as Paula Brown Studaker ("Brown") was represented by John A. Hubbard, Esq. of the Law Offices of Alan Miller, located in Birmingham, Michigan.

**CASE INFORMATION**

Statement of Claim filed: April 2, 1993.

Claimant Middendorf's Submission Agreement signed on: March 11, 1993.

Claimant Alloran's Submission Agreement signed on: January 27, 1993 by Lorna Middendorf, President, Alloran, Inc.

Claimant SEP's Submission Agreement signed on: January 27, 1993 by Lorna Middendorf as Trustee of SEP-Lorna Middendorf of Alloran, Inc.

Statement of Answer filed by Respondent on: October 11, 1993.

Respondent's Submission Agreement signed on: October 11, 1993.

Respondent's Motion to Dismiss filed: June 16, 1994.

Respondent's Supplemental Motion to Dismiss filed: August 8, 1994.

Claimants' Response to the Motion to Dismiss filed: August 11, 1994.

### **HEARING INFORMATION**

Pre-Hearing Conferences: March 29, 1994 for One (1) session before One (1) arbitrator;  
June 16, 1994 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: August 25, 1994 for Two (2) sessions;  
October 12, 1994 for One (1) session; and  
October 13, 1994 for Two (2) sessions.

Hearing Location: Southfield, Michigan.

### **CASE SUMMARY**

Claimants alleged that Brown induced them to trade in securities which were unsuitable given their known investment goals and then misrepresented the true value of the investments over a period of time to prevent Claimants from learning the true value of the investments. The Claimants specifically alleged that:

1. Brown was required to follow the rules of the NASD and the New York Stock Exchange. Claimants had the right to rely upon Brown to follow those rules;
2. Beginning in 1984 and continuing until August of 1992, Brown began a pattern of trading activity which was unsuitable in light of the investment goals stated to Brown. Claimants had advised Brown that they wanted low risk to their principal in any investment recommended to them;
3. Brown churned the accounts by executing numerous buys and sells of mutual funds. The transactions had economic benefit for Claimants and were in complete disregard of their investment objectives, but were done for the sole purpose of generating large amounts of commissions for Brown;
4. Brown sold to Claimants a large number of limited partnerships which were worthless, illiquid and unsuitable for their needs. Brown falsely presented the value of these limited partnerships over a long period of time by reporting the face value instead of market value, preventing Claimants from learning the true extent of their loss;
5. Brown had Claimants speculate in low price stocks which were unsuitable; and
6. Brown was incapable of correctly filling out the new account forms and other documents, requiring Claimants to spend large sums on accountants to correct tax

forms. The failure to correctly complete the forms was due to Brown's gross negligence.

Respondent denied the material allegations of the Statement of Claim, alleging that:

1. In or about 1984, Middendorf opened an individual account and stated that her investment objectives were growth and income. When the accounts for the other Claimants were opened, all accounts were for growth and income;
2. The accounts remained with Brown through her moves to different firms. No investments were made by Claimants through Brown after 1988;
3. All the accounts were non-discretionary accounts with Middendorf making all investment decisions. Middendorf was counseled by various other advisors, including a Shearson financial planner, an attorney, and two certified public accountants;
4. Middendorf would contact Brown regarding her investments when funds had accrued in her money market account and Brown would send information regarding various investment options. Brown would meet with Middendorf and provide summary sheets and prospectus, if applicable. It is believed that Middendorf would choose the investment after consulting with her advisors; and
5. Brown did not provide tax advice Claimants or hold herself out as having any specialized tax knowledge. Brown repeatedly advised Middendorf to seek tax advice regarding her investments.

Brown asserted several affirmative defenses, including the following:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. The Statement of Claim is barred by the applicable statute of limitations; by the doctrines of waiver, estoppel, laches and release; and by Claimants' or third parties negligence, comparative negligence and contributory negligence;
3. The Statement of Claim is barred by the Claimants' ratification of the acts complained of and the failure to mitigate damages;
4. The Statement of Claim is barred because the Respondent's alleged actions were not the proximate cause of any alleged injury;

5. The Statement of Claim and all claims relating to the purchase of securities six years prior to filing are barred by Section 15 of the NASD Code of Arbitration Procedure; and

6. The claims are barred because Claimants knowingly assumed the risks and losses of which they now complain.

#### **RELIEF REQUESTED**

Claimants requested entry of an award against Brown for the following damages: the return of all commissions; the return of principal totaling approximately \$100,000.00; attorneys' fees; exemplary or punitive damages due to the conduct of Brown over such a long period of time; and the waiver of all filing fees.

Respondent requested entry of an award dismissing the claim in its entirety and awarding Respondent her costs, attorneys' fees and other expenses incurred in responding to the claim.

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

On August 25, 1994, the Panel held a hearing to consider Respondent's Motion to Dismiss. After reviewing the Motion and responses, and hearing argument on the matter, the Panel unanimously denied the Motion to Dismiss.

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. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically granted is hereby denied.

**OTHER COSTS**

The National Association of Securities Dealers, Inc. shall retain the \$500.00 postponement fee paid by Respondent Paula Brown Studaker.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) Pre-Hearing conferences before One (1) arbitrator x \$300.00 per session = \$600.00; Five (5) Hearing sessions before the full panel x \$500.00 per session = \$2,500.00; Total forum fees = \$3,100.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee filed by Claimants. In addition, Claimants Lorna Middendorf, Alloran, Inc. and SEP-Lorna Middendorf of Alloran, Inc. are liable for and shall pay to the NASD the sum of \$1,550.00 as forum fees. Respondent Paula Brown, n/k/a Paula Brown Studaker is liable for and shall pay to the NASD the sum of \$1,550.00 as forum fees.

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

**Concurring Arbitrators' Signatures**

Name

Date

/s/ Howard Lynn  
Howard Lynn  
Public Arbitrator  
Chairperson

April 6, 1995

/s/ Elwood S. Simon, Esq.  
Elwood S. Simon, Esq.  
Public Arbitrator

April 5, 1995

/s/ Alfred B. Moran  
Alfred B. Moran  
Industry Arbitrator

April 27, 1995

For NASD Use Only

Date of Service of Award: May 2, 1995