

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Billy Turner and Lynn Forester

and

93-01367

Name of Respondents

A. B. Culbertson and Company and
Michael E. Boever

REPRESENTATION OF PARTIES

Billy Turner and Lynn Forester ("Claimants") were represented by Bert Kell, Esq. of Hoover & Storey, Little Rock, Arkansas.

A. B. Culbertson and Company ("Culbertson") was represented by B. Frank Cain, Esq. of Bowers & Cain, Fort Worth, Texas.

Michael E. Boever ("Boever") was represented by John E. Pruniski, Esq. of Hilburn, Calhoun, Harper, Pruniski & Calhoun, Ltd., North Little Rock, Arkansas.

CASE INFORMATION

The Statement of Claim was filed on or about April 5, 1993. Submission Agreement of Claimants Billy Turner and Lynn Forester was signed on March 31, 1993. Claimant's Response to Respondent Michael E. Boever and A.B. Culbertson's Motion to Dismiss was filed on or about October 28, 1993. Supplemental Response to Michael E. Boever and A.B. Culbertson's Motion to Dismiss was dated November 24, 1993.

Statement of Answer was filed by Respondent A. B. Culbertson and Company on or about June 25, 1993. Submission Agreement of Respondent A. B. Culbertson and Company was signed on June 24, 1993 by Dolores Mefford. Motion to Dismiss was filed on or about September 23, 1993.

Statement of Answer was filed by Respondent Michael E. Boever on or about June 24, 1993. Submission Agreement of Respondent Michael E. Boever was signed on June 25, 1993. Motion to Dismiss was dated August 30, 1993. Reply to Claimant's Response to Respondent Michael E. Boever and A.B. Culbertson's Motion to Dismiss was filed November 15, 1993.

HEARING INFORMATION

A hearing to hear arguments on the Motions to Dismiss was held on Tuesday, November 30, 1993 in Little Rock, Arkansas for one (1) session.

CASE SUMMARY

Claimant alleged that shortly after meeting Respondent Boever, he informed Boever that he had been institutionalized in 1984 for mental problems. It was alleged that during a conversation about investments, Respondent Boever told the Claimant that the Old Time Gospel Hour bonds were backed by a church that had been in existence for over 300 years and that the bonds were a good investment. Claimant alleged that at the time of the purchase of the bonds he suffered from mental impairment and that his only source of income was monthly Social Security disability payments. Claimant also alleged that he was not told of the speculative nature of the bonds. Claimant specifically alleged that Respondents breached their duty to deal fairly; violated the N.A.S.D. Rules of Fair Practice; and violated federal and state anti-fraud provisions. Claimant stated that Lynn Forester was not involved in the purchase of the bonds and did not contribute any funds to their purchase. Mr. Forester's interest is that of a naked title holder with rights of survivorship in the event of Mr. Turner's death.

In its Answer Respondent A.B. Culbertson and Company specifically denied the allegations that Claimant had disclosed any information to Respondent Boever regarding any mental impairment which should have caused Boever to decline the Claimant's specific requests to purchase the bonds in question. Culbertson also stated that the Claimant had been provided with a prospectus on the bonds.

In his Answer, Respondent Boever stated that he did not know and had no way of knowing that Claimant was mentally impaired or living on a fixed income, if in fact those allegations are true. Boever denied making affirmative representations or suggestions that Claimant purchase the bonds. Boever further stated that he had attempted to discourage Claimant from concentrating all of his investment in the bonds.

Respondents filed separate Motions to Dismiss pursuant to §§15 and 16 of the N.A.S.D. Code of Arbitration Procedure alleging that the claims asserted in this matter are clearly barred by the applicable statutes of limitation. Respondents specifically stated that the transactions complained of in this matter occurred on April 15, 1987 and sometime in either April or May, 1987 while the Statement of Claim was filed on April 5, 1993.

Claimant in his response argued that the state and federal periods of limitation should be tolled because of Billy Turner's disability. Claimant specifically state that Billy Turner was not capable

of understanding that he had rights and that these rights would be barred if not pursued within a certain period of time.

RELIEF REQUESTED

Claimant requested an award in the amount of \$17,000.00, interest, costs, attorney's fees and punitive damages.

Respondent Culbertson requested that the claims asserted against it be dismissed.

Respondent Boever requested that the claims asserted against him be dismissed.

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 original(s) remain on file with the N.A.S.D.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing on the Motions to Dismiss, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Motions to Dismiss are hereby granted. The claims asserted in this matter are dismissed as time barred under the applicable statutes of limitations.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Pursuant to §43(a) of the N.A.S.D. Code of Arbitration Procedure, the Director of Arbitration waived the deposit of the appropriate filing and hearing session fees. Pursuant to §43(c) of the Code of Arbitration Procedure, the Claimant shall pay to the National Association of Securities Dealers, Inc. ("N.A.S.D.") the sum of \$400.00.

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Patrick A. Burrow, Esq.

December 14, 1993

Patrick A. Burrow, Esq.

Public Arbitrator, Presiding Chair

s/ B. Jeffrey Pence, Esq.

B. Jeffrey Pence, Esq.

Public Arbitrator

s/ W. Kirby Lockhart, Esq.

December 14, 1993

W. Kirby Lockhart, Esq.

Industry Arbitrator

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