

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

William D. Blackwood and Donna Blackwood

and

93-01681

Name of Respondents

Mark Ivan Bass
Pennington Bass Equities, Inc.
Derand Pennington Bass Inc.

REPRESENTATION OF PARTIES

William D. Blackwood and Donna Blackwood ("Claimants") were represented by John Lawrence Allen, Esq., Carlsbad, California.

Mark Ivan Bass, Pennington Bass Equities, Inc., and Derand Pennington Bass Inc. (collectively as "Respondents") were represented by David M. Kleiman, Esq. of Vial, Hamilton, Koch & Knox, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about April 27, 1993. Response to Motion to Dismiss dated September 14, 1993. Submission Agreement of Claimants was signed on April 6, 1993.

Statement of Answer was filed by Respondents Mark Ivan Bass, Pennington Bass Equities, Inc. and DeRand/Pennington/Bass, Inc., on or about August 3, 1993. Motion to Dismiss dated August 2, 1993, Reply to Claimants' Response to Motion to Dismiss was filed on or about September 22, 1993. Submission Agreement of Respondent Mark Ivan Bass was signed on July 30, 1993.

HEARING INFORMATION

A pre-hearing conference was held on Friday, April 29, 1994 for one (1) session with all arbitrators.

The hearing was held on Tuesday, May 24, 1994 for two (2) sessions, Wednesday, May 25, 1994 for two (2) sessions, Thursday, May 26, 1994 for two (2) sessions, Friday, May 27, 1994 for two (2) sessions, Tuesday, May 31, 1994 for two (2) sessions and Wednesday, June 1, 1994 for one (1) session in Dallas, Texas for a total of twelve (12) sessions.

CASE SUMMARY

Claimant alleged that Respondents failed to professionally and responsibly advise them in the prudent investment of their retirement funds; violated Claimants' trust and confidence; disregarded their clear instructions and recommended the purchase of high risk, speculative, securities and limited partnerships, in amounts and of types that were inconsistent with prudent rules of investing and were inappropriate and unsuitable in light of their stated investment objectives. Claimants also alleged that Respondents made fraudulent and negligent statements and omissions of material facts regarding the high risk and speculative nature of the securities and the value of the securities purchased. Claimants further alleged that Derand Pennington Bass, Inc. and Pennington Bass Equities, Inc. failed to properly supervise Mark Bass.

Respondents denied each and every allegation and implication of wrongdoing contained in the Statement of Claim and denied that they are liable to the Claimants for any negligence, for violating any NASD rule, for breach of contract, for breach of fiduciary duty, or for any of the various species of fraud alleged by Claimants. Respondents specifically stated that the Claimants had never stated that their primary goal was preservation of capital for retirement. It was stated that Mr. Blackwood had stated that his income was sufficient to provide for his family but that he needed lower taxes now to help provide for the education of his children.

Respondents stated that the decision to purchase the complained of securities, to hold those investments, or to sell them, was made by the Claimants. Mark Ivan Bass further stated that he had never recommended the purchase of investments that were inconsistent with Claimants' needs or desires, or that were unsuitable for the Claimants' stated investment objectives. Respondents stated that it was the Claimants' desire to invest in tax shelters or investments with specific tax advantages that provided a major impetus for investing in limited partnerships. It was also stated by Respondents that at the time each of the investments was made, it was reasonable to believe that the investments would meet the Claimants' investment objectives. Respondents also asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested an award in the amount of \$1,120,545 as follows:

- * rescission of all limited partnership and real estate investment trust interests and the return of all monies invested in the limited partnerships and real estate investment trust in the approximate amount of \$479,639;

- * rescission of all interests in Pennington Bass stock and option funds and the return of all monies invested in the sock and option funds in the approximate amount of \$46,982;
- * rescission of all stock and debenture interests in Derand Corporation of America and the return of all monies invested in stock and debentures in Derand Corporation of America in the approximate amount of \$46,000;
- * out of pocket losses in an amount to be determined at the arbitration hearing;
- * pre and post award interest from the date of the original investments at an annualized rate of 8% in the approximate amount of \$341,424;
- * filing fees in the amount of \$500;
- * forum fees;
- * expert witness fees in the approximate amount of \$6,000;
- * attorneys fees in the approximate amount of \$200,000;
- * management fees and commissions charged by Respondents in pursuit of their unlawful enterprise in an amount to be determined at or before the time of arbitration;
- * punitive damages and exemplary damages in a sum sufficient to properly punish and make an example of Respondents, and to deter such acts in the future, said sum being determined by the arbitrators; and
- * such other relief as the arbitrators deem just and equitable.

Respondents requested that the claims asserted against them be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Respondents asserted a Motion to Dismiss. After hearing arguments on the Motion during the session held on April 29, 1994, the undersigned arbitrators denied the motion without prejudice and advised Respondents that they may reassert the motion at a later time.

Respondents Pennington Bass Equities, Inc., and Derand Pennington Bass Inc. did not file with the N.A.S.D. properly executed submissions to arbitration. These Respondents asserted a Motion to Dismiss based upon lack of jurisdiction over them since they were not members of the NASD at the time of the filing of this claim. Respondents Pennington Bass Equities, Inc., and Derand Pennington Bass Inc. filed an answer, appeared and offered testimony at the hearing without waiving their claim that the NASD does not have jurisdiction over them. The undersigned arbitrators find that they do have jurisdiction over these Respondents.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Mark Ivan Bass, Pennington Bass Equities, Inc., and Derand Pennington Bass Inc. shall be and hereby are jointly and severally liable for and shall pay to the Claimants William D. and Donna Blackwood the sum of \$346,100. This amount consists of \$180,000 in actual damages; \$41,000 in expenses; \$62,100 in interest; and \$63,000 for attorneys' fees. In making this award the undersigned arbitrators find that Respondents engaged in constructive fraud. The undersigned arbitrators also have determined that they have the authority to award attorneys' fees in this matter.
2. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.
3. All relief requested not addressed above is hereby denied including any requests for punitive or exemplary damages.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There were 12 sessions x \$1,000 = \$12,000 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the N.A.S.D. by the Claimant. Respondents shall be and hereby are

jointly and severally liable for and shall pay to the NASD the sum of \$11,000 as the balance due in forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Douglas F. Pierce, Esq.
Douglas F. Pierce, Esq.
Public Arbitrator, Presiding Chair

June 30, 1994

s/ Ann Blaess Kimball, Esq.
Ann Blaess Kimball, Esq.
Public Arbitrator

July 1, 1994

s/ Jack C. Payne
Jack C. Payne
Industry Arbitrator

June 27, 1994