

N.A.S.D. Final Order

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Pete DeKalb, Sue Balch, Linda Busch
and Alan DeKalb

and

93-02474

Name of Respondent

H.D. Vest Investment Securities, Inc.

REPRESENTATION OF PARTIES

Pete DeKalb, Sue Balch, Linda Busch and Alan DeKalb ("**Claimants**") were represented by Charles M. Hamilton, Esq. of the Law Offices of H. Dawson French, Dallas, Texas.

H.D. Vest Investment Securities, Inc. ("**Respondent**") was represented by Corbet F. Bryant, Jr., Esq., of Carrington, Coleman, Sloman & Blumenthal, L.L.P., Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about June 24, 1993. Submission Agreement of Claimant Pete DeKalb was signed on May 18, 1993. Submission Agreement of Claimant Sue Balch was signed on May 18, 1993. Submission Agreement of Claimant Linda Busch was signed on May 17, 1993. Submission Agreement of Claimant alan DeKalb was signed on May 18, 1993. Response to Motion to Dismiss was filed on February 8, 1994. Amended Statement of Claim was filed on February 8, 1994.

Statement of Answer was filed by Respondent on or about August 20, 1993. Motion to Dismiss dated January 10, 1994. Submission Agreement of Respondent was signed on August 18, 1993 by Patricia A. Bellows.

HEARING INFORMATION

The hearing was held on Thursday, February 17, 1994 in Dallas, Texas for a total of one (1) session.

CASE SUMMARY

Claimant alleged that Respondent through its registered representative, Jeffrey Adelstone, made improper investment recommendations which constituted a material breach of their written agreement; and fraud or deceit in a securities transaction. Specifically, Claimants alleged that they were not suitable investors for the purchase of highly speculative joint ventures and limited partnerships.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that Mr. Adelstone spent many weeks preparing and developing the investment plans for the Claimants in his role as an Investment Adviser, and that in making the recommendations consistent with those plans, he provided full and complete explanations of the plans and the investments. Affirmative defenses were asserted by Respondent including but not limited to the following:

- * Claimants fail to state a claim upon which relief may be granted.
- * Claimants claims are barred by the Statute of Limitations.
- * Claimants claims are barred by the doctrine of collateral estoppel.
- * there is no private right of action for a violation of a NASD rule.

RELIEF REQUESTED

Claimants requested an award granting damages to Claimants for their purchase of the securities at issue and an award of the losses incurred by them as a result of their purchase of the securities, with interest as provided by law, reasonable attorney's fees, costs, and all other relief, at law or equity, to which Claimants might be justly entitled.

Respondent requested that the claims for damages be denied in all respects and that the cost of this proceeding be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing on Thursday, February 17, 1994, the undersigned arbitrators considered the Claimant's Motion to Amend the Statement of Claim and heard arguments presented on behalf of the parties. The arbitrators **granted** the Motion to Amend. The Amended Statement of Claim was accepted by the arbitrators.

The Motion to Dismiss filed on behalf of Respondent and Claimant's Response to Motion to Dismiss was considered at the hearing held on Thursday, February 17, 1994. The Motion to Dismiss asserted, in part, the argument that the claims alleged in this matter should be dismissed as time barred by the applicable statutes of limitations.

The parties have agreed that the Order in this matter may be executed in counterpart copies and to receive conformed copies of the Order while the original(s) remain on file with the N.A.S.D.

ORDER

After considering the pleadings and the arguments presented at the hearing and the pre-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Motion to Dismiss shall be and hereby is **granted**. The claims asserted in this matter are therefore dismissed with prejudice.
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(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 \$200.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimant.

Forum fees are calculated at the rate of \$750.00 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/ James S. Raber, Esq.
James S. Raber, Esq.
Public Arbitrator, Presiding Chair

March 11, 1994

s/ Charles P. Aberg, Esq.
Charles P. Aberg, Esq.
Public Arbitrator

March 10, 1994

s/ Stephen Denning
Stephen Denning
Industry Arbitrator

March 10, 1994