

**NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the Matter of the Arbitration Between

Name of Claimant

Amy Lou Gardner

and

93-02528

Name of Respondents

Robin Payne  
Travelers Equity Sales, Inc.

**REPRESENTATION OF PARTIES**

Amy Lou Gardner ("Claimant") was represented by Nicholas L. Gardner, Houston, Texas.

Travelers Equity Sales, Inc. ("Respondent Travelers") was represented by Martin P. Unger, Esq., of Tenzer, Greenblatt, Fallon & Kaplan, New York, New York.

Robin Payne ("Respondent Payne") was represented by Kenneth C. Wolfe, Esq., of Wolfe & Kneeland, Fort Collins, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 28, 1993. Response to Motions to Dismiss was dated April 4, 1994. Submission Agreement of Claimant Amy Lou Gardner was signed on June 23, 1993.

Statement of Answer was filed by Respondent, Travelers Equity Sales, Inc. on or about September 1, 1993. Motion to Dismiss was filed January 18, 1994. Submission Agreement of Respondent Travelers Equity Sales, Inc. was signed on August 3, 1993 by Julie E. Rockmore.

Statement of Answer was filed by Respondent Robin Payne on or about August 25, 1993. Motion to Dismiss was dated September 7, 1993. Submission Agreement of Respondent Robin Payne was signed on August 25, 1993.

### **HEARING INFORMATION**

The hearing was held on Wednesday, April 20, 1994 for one (1) session, Wednesday, July 6, 1994 for two (2) sessions and Thursday, July 7, 1994 for two (2) sessions in Denver, Colorado for a total of five (5) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondent Payne guided her into investments which were unsuitable for a person in her financial situation. Claimant specifically alleged that Respondent Payne knowing her situation as well as the poor performance of his prior recommendations, advised her to invest in two high risk bond mutual funds. Claimant further alleged that during the time she owned the mutual funds, Respondent Payne materially misrepresented the performance of those investments.

Respondent Robin Payne denied the claims asserted in the Statement of Claim and stated that the accounts of the Claimant and her late husband were properly handled. Respondent Payne also stated that the investments made by the Claimant and her late husband were suitable at the time they were made and that subsequent changes that occur after the investments do not render them unsuitable when made. The following affirmative defense were also asserted: the Claimant fails to state a claim upon which relief can be granted; the claims asserted are barred by the applicable statutes of limitation; the claims are barred by the doctrines of estoppel, waiver, and acquiescence; the damages, if any, were caused by factors over which Robin Payne had neither responsibility or control; failure to mitigate; and the damages, if any, were not proximately caused by any act or omission of Robin Payne.

Respondent Traveler's denied the allegations set forth in the Statement of Claim. Respondent Traveler's stated that only the June 1987 Keystone mutual fund investments occurred during the period Respondent Payne was registered through it and an analysis of these investments in the Keystone funds shows that they were eminently suitable for her in light of the objectives and policies of these funds and the amount invested in each of the funds.

### **RELIEF REQUESTED**

Claimant requested an award of actual damages in the amount of \$39,939, punitive damages in the amount of \$79,878, interest in the amount of \$16,126, costs, and expenses.

Respondent Payne requested that the Statement of Claim be dismissed in its entirety and that the Claimant take nothing by her Statement of Claim.

Respondent Traveler's requested an award dismissing the claims asserted against it with prejudice, and the costs of this arbitration should be assessed against the Claimant.

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

During the hearing session conducted on Wednesday, April 20, 1994, the undersigned arbitrators heard argument on the Respondents Motions to Dismiss. After considering the arguments presented on behalf of the parties, the panel took the motions under advisement and will revisit the motions upon the request of the Respondents. Subsequent to the hearing on April 20, 1994 and prior to the hearing on the merits, the Respondents requested that the panel reconsider the motions. The panel again took the motions under advisement until the conclusion of the Claimant's case in chief. Respondents at the conclusion of the Claimant's case in chief requested that panel consider the outstanding Motions to Dismiss. After considering the arguments presented by the parties, the panel took the motions under advisement.

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 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 claims asserted in this matter shall be and hereby are dismissed as being barred by the applicable statutes of limitations. In addition, the claims would also be dismissed on the merits if they were not barred by the applicable statutes of limitations.
2. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were five (5) sessions x \$750 = \$3,750 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 NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant. Claimant shall pay to the NASD the sum of \$500, Respondent Payne shall pay to the NASD the sum of \$1,250 and Respondent Travelers shall pay

to the NASD the sum of \$1,250 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ William F. Skewes, Esq.  
William F. Skewes, Esq.  
Public Arbitrator, Presiding Chair

July 7, 1994

s/ James J. Cronin, Esq.  
James J. Cronin, Esq.  
Public Arbitrator

July 7, 1994

s/ Donald W. Diones  
Donald W. Diones  
Industry Arbitrator

July 7, 1994