

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

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

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**In the Matter of the Arbitration Between**

**Name of Claimant**

**Jocelyn Mackay and  
B.L. McIvor**

**and**

**93-02853**

**Name of Respondents**

**Reynolds Kendrick & Stratton, Inc. and  
Ruth Sutherland**

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### **REPRESENTATION OF PARTIES**

Jocelyn Mackay and B.L. McIvor ("Claimants") were represented by Jerome H. Ferguson, III, Esq. of Ferguson and Burns, Dallas, Texas.

Reynolds Kendrick & Stratton, Inc. and Ruth Sutherland ("Respondents") were represented by Scott G. Monson, Esq. of RKS Financial Group, Salt Lake City, Utah and Ron Rubin, Esq. of Camhy Karlinsky Stein Razzano & Rubin, Washington, D.C.

### **CASE INFORMATION**

The Statement of Claim was filed on or about July 21, 1993.

Statement of Answer was filed by Respondents on or about November 8, 1993. Submission Agreement of Respondent Reynolds, Kendrick & Stratton, Inc. was signed on October 12, 1993 by Scott G. Monson. Submission Agreement of Ruth Sutherland was signed on October 12, 1993.

### **HEARING INFORMATION**

The hearing was held on Tuesday, February 22, 1994 for one (1) session, Monday, April 11, 1994 for three (3) sessions, Tuesday, April 12, 1994 for two (2) sessions, and Wednesday, April 13, 1994 for one (1) session in Dallas, Texas for a total of seven (7) sessions.

### CASE SUMMARY

Claimant alleged that Respondents breached their fiduciary duty to them; made unsuitable recommendations and executed unsuitable transactions; engaged in common law fraud; and violated the Texas Deceptive Trade Practices Act. Specifically, Claimant alleged that Respondent failed to disclose certain material facts including but not limited to the following:

- \* that Worldwide Collection Fund had an extraordinary loss for the nine months ended 4/30/91 of \$4,457,000 and that the book value per share at the close of 4/30/91 stood at only \$.45 per share.
- \* that the insiders of Worldwide were bailing out of the stock.
- \* that the principal officer and various directors of Worldwide had a long disciplinary history with the S.E.C. and the court system and had been permanently enjoined from violating the securities laws because of his manipulation of the market for a security.
- \* that the company had a history of insider dealing and that all of the company's primary assets were financially weak.

Finally, Claimant alleged that Respondent Reynolds Kendrick & Stratton failed to properly supervise Respondent Sutherland.

Respondents affirmatively stated that Claimant Mackay represented herself to be a very experienced investor with particular experience and interest in low priced, speculative stock, and, that she had:

- \* marked the occupation section of her New Account application as "investor."
- \* had listed the following investment objectives on the Options Account Application in the listed order of priority: growth, profits, speculation, safety of principal and income.
- \* represented to Respondent Sutherland that she anticipated settlement monies which she intended to use for risk capital for profit.
- \* boasted of her expertise and her son's experience in the stock market.

The following affirmative defenses were asserted by the Respondents: The Statement of Claim fails to state a claim upon which relief can be granted; any loss, injury or damage sustained by the Claimants is as a result of Claimants decisions and misrepresentations by the Claimants and not as a result of any actions by Respondents; waiver; estoppel; and failure to mitigate.

### RELIEF REQUESTED

Claimants requested an award against Respondents, jointly and severally, in the amount of approximately \$67,500, actual attorney's fees, treble damages under the Texas Deceptive Trade Practices Act or punitive damages.

Respondents requested that any and all claims be dismissed summarily, and for an order that Claimants shall take nothing by their Statement of Claim. Respondents further requested that Claimants reimburse them their costs, expenses and reasonable attorney's fees necessary to defend themselves in this unwarranted action.

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

1. Claimant B.L. McIvor shall take nothing by his claim.
2. Respondents Reynolds Kendrick & Stratton, Inc. and Ruth E. Sutherland shall be and hereby are jointly and severally liable for and shall pay to the Claimant Jocelyn Mackay the sum of \$94,101.78 which sum includes an award of attorney's fees in the amount \$31,367.26. In making this award of attorneys' fees, the undersigned arbitrators considered the arguments presented on behalf of the parties and have determined that they have authority to so award attorneys' fees.
3. Respondents Reynolds Kendrick & Stratton, Inc. and Ruth E. Sutherland shall be and hereby are jointly and severally liable for and shall pay to the Claimant Jocelyn Mackay simple interest at the rate of 10% per annum on the amount of \$55,677 calculated from April 1, 1992 until the full amount of the award is paid.
4. The claims for treble damages and for damages under the Texas Deceptive Trade Practices Act are hereby denied.
5. All relief requests not specifically granted are hereby denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were 7 sessions x \$500 = \$3,500 in forum fees. §43(b) states that 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 \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the N.A.S.D. by the Claimant. Respondents shall be and jointly and severally liable for and shall pay to the NASD the sum of \$3,000 as forum fees.

The N.A.S.D. shall retain postponement fees in the amount of \$500 previously deposited with the N.A.S.D. by Respondent Reynolds Kendrick & Stratton, Inc. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

**s/ James S. Raber, Esq.**

**April 27, 1994**

James S. Raber, Esq.

Public Arbitrator, Presiding Chair

**s/ Winston C. Fournier**

**April 26, 1994**

Winston C. Fournier

Public Arbitrator

**s/ David L. Baker**

**April 26, 1994**

David L. Baker

Industry Arbitrator