

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Nancy Rampy

93-02907

Name of Respondents

Brokers Investment Corporation, Bruce Hartberg
Dan Steinberg, and Norman Shubert

REPRESENTATION OF PARTIES

Claimant was represented by Rebecca E. Bender, Esq. of Rebecca E. Bender & Associates, Minneapolis, Minnesota.

Respondents, Norman A. Shubert, Brokers Investment Corporation, and Daniel H. Steinberg were represented by Michael R. Matthias, Esq. of Matthias & Berg, Los Angeles, California.

Respondent Bruce Hartberg was not represented.

CASE INFORMATION

The Statement of Claim was filed on or about July 26, 1993. Submission Agreement of Claimant Nancy Rampy was signed on July 22, 1993.

Joint Statement of Answer was filed by Respondents, Brokers Investment Corporation, Daniel H. Steinberg and Norman A. Shubert on or about November 2, 1993. Statement of Answer and cross claim against Brokers Investment Corporation, Daniel Steinberg and Norman Shubert was filed by Respondent Bruce Hartberg on or about November 11, 1993.

Submission Agreement of Respondents, Brokers Investment Corporation, Norman A. Shubert, individually was signed on October 26, 1993 by Norman A. Shubert, President, Brokers Investment Corporation. Submission Agreement of Respondent, Daniel H. Steinberg was signed on October 28, 1993 by Daniel H. Steinberg. Submission Agreement of Respondent Bruce L. Hartberg was signed on November 11, 1993 by Bruce L. Hartberg.

HEARING INFORMATION

A pre-hearing conference was held on July 28, 1994 for one (1) session; and on September 20, 1994 for one (1) session for a total of two (2) prehearing conference sessions.

The hearing was held on October 18, 1994 for two (2) sessions and on October 19, 1994 for two (2) sessions in Minneapolis, Minnesota for a total of four (4) sessions.

CASE SUMMARY

Claimant, Nancy Rampy ("Claimant") alleged that Respondent, Bruce Hartberg ("Hartberg"), while employed by or acting as an agent for Respondent Brokers Investment Corporation, placed Claimant's funds into securities which were unsuitable given her investment objectives and also omitted to apprise Claimant of the attendant risks of such an investment. Furthermore, Claimant alleged that Respondent, Daniel Steinberg and Norman Shubert failed in their duty to supervise Hartberg. Based on these allegations, Claimant asserted claims for the violation of Section 10(b) of the Securities & Exchange Act of 1934 [15 U.S.C. §78(j)]; Section 80A.01 of the Minnesota Blue Sky Laws; breach of contract; the NYSE Know Your Customer Rule; Minnesota Statute §325F.68, et seq.; common law fraud; negligent misrepresentation; negligence; breach of fiduciary duty; and *respondeat superior*.

Respondents Brokers Investment Corp. ("BIC"), Steinberg, and Shubert denied the material allegations of the Statement of Claim. Respondents alleged that Claimant represented to BIC that she was an accredited and sophisticated investor; that all aspects of the investments, including its high risk nature, were fully disclosed to the Claimant; and that Claimant was provided complete and accurate information and accountings concerning her investments. Respondents Steinberg and Shubert alleged they were not involved in any way with the sales of the subject investments to Claimant and did not know, and in the exercise of reasonable care could not have known, of the existence of any facts upon which liability is alleged.

Respondent Bruce Hartberg denied the allegations of the Statement of Claim. Hartberg alleged that Claimant solicited from Hartberg information concerning the subject investment, which information was supplied only at her request. Claimant represented that she understood the risks inherent in such investments and that she had experience in such investments.

RELIEF REQUESTED

Claimant requested an award against Brokers Investment Corp., Hartberg, Steinberg, and Shubert in the amount of \$172,000.00 for out-of-pocket losses; plus an award for twice the amount of commissions paid; market adjusted damages; rescission of investments; \$18,000.00 penalty for early withdrawal of annuity funds; punitive damages; interest; attorney's fees, costs, and expenses.

Respondents Brokers Investment Corp. ("BIC"), Steinberg, and Shubert requested that the Claimant take nothing by virtue of her claim herein and that the matter be dismissed.

Respondent Hartberg requested that the Statement of Claim be dismissed in its entirety and that

Respondent Hartberg recover against Claimant and/or Cross Respondents for his attorney's fees, costs, and expenses that were incurred in the matter.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Norman Shubert did not appear at the hearing but testified by telephone. Respondent Bruce Hartberg was not represented and did not appear at the hearing other than through filing of a Declaration of Respondent Bruce Hartberg in Lieu of Appearance.

Claimant made a Motion at the hearing for entry of a Default Judgment Against Norman Shubert and Bruce Hartberg for failure to appear. The motion was denied and the hearing proceeded.

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 originals 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 post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Brokers Investment Corporation, Bruce Hartberg, Daniel Steinberg, and Norman Shubert shall be and hereby are jointly and severally liable for and shall pay to the Claimant Nancy Rampy, compensatory damages in the sum of Sixty One Thousand, Nine Hundred Sixteen Dollars and No Cents (\$61,916.00);
2. Respondents Brokers Investment Corporation, Bruce Hartberg, Daniel Steinberg, and Norman Shubert shall be and hereby are jointly and severally liable for, and shall pay to the Claimant Nancy Rampy, interest in the sum of Sixteen Thousand Dollars and No Cents (\$16,000.00) accruing from June 21, 1990;
3. Respondents Brokers Investment Corporation, Bruce Hartberg, Daniel Steinberg, and Norman Shubert shall be and hereby are jointly and severally liable for, and shall pay to the Claimant, attorney's fees in the sum of Thirteen Thousand, Eighty Four Dollars and No Cents (\$13,084.00). Attorney's fees are awarded based upon the Minnesota Consumer Protection Act;
4. Claimant's request for punitive damages is denied;
5. Claimant's other specific requests are denied;

6. Respondent Bruce Hartberg's request for attorney's fees, costs and expenses are denied.

7. The panel determined that Respondent Bruce Hartberg and Brokers Investment Corp. committed fraud in obtaining money from claimant under false pretenses, or false representations, and acted wilfully and maliciously with a total disregard for the rights of Claimant Nancy Rampy.

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.

The following Forum fees are assessed: two (2) pre-hearing conferences x \$300.00 per conference = \$600.00 plus four hearing sessions x \$750.00 per session = \$3,000.00 minus the \$750 hearing session deposit = \$2250. Total Forum Fees Due: \$2850.

Claimant Nancy Rampy is liable for and shall pay to the NASD additional forum fees of \$1,050.00. Respondents, Brokers Investment Corporation, Bruce Hartberg, Daniel Steinberg and Norman Shubert shall be jointly and severally responsible for paying to the NASD, additional forum fees in the sum of \$1800.

Respondents, Brokers Investment Corporation, Bruce Hartberg, Daniel Steinberg, and Norman Shubert are jointly and severally responsible for reimbursing to the Claimant, Nancy Rampy the sum of \$950.00 which was previously deposited with the NASD as hearing session deposit and filing fee.

In addition to the Forum Fees stated above, Respondent Bruce Hartberg shall pay to the NASD the nonrefundable filing fee for his cross claim in the sum of \$500.

Fees are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

s/s Lawrence R. Commers

12/7/94

Lawrence R. Commers, Esq.
Public Arbitrator, Presiding

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s/s Richard J. Hansen

12/8/94

Richard J. Hansen
Public Arbitrator

s/s Lawrence Walter Carlsen

12/8/94

Lawrence Walter Carlsen
Industry Arbitrator

Date Award Served By The NASD: 12/9/94.