

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

William A. and Carol Cowl

93-02972

Name of Respondent

McGinn, Smith & Co., Inc.

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**REPRESENTATION**

For Claimant: Timothy J. O'Connor of Ainsworth, Sullivan, Tracy, Knauf, Warner & Ruslander located in Albany, New York.

For Respondent: Michael J. Smith of Roemer and Featherstonhaugh, P.C.

**CASE INFORMATION**

Statement of Claim filed: July 29, 1993.

Claimant's Submission Agreement signed on: July 22, 1993.

Statement of Answer filed by Respondent on: October 5, 1993.

Respondent's Submission Agreement signed on: .

**HEARING INFORMATION**

Pre-Hearing Conference: August 30, 1994 / One Session.

Hearing Dates/Sessions: September 8, 1994 / Two Sessions.  
September 15, 1994 / One Sessions.  
September 16, 1994 / Two Sessions.

Hearing Location: Marriot Hotel  
189 Wolf Road  
Albany, New York

**CASE SUMMARY**

Claimant alleged that based upon Respondent's recommendation Claimants invested a \$78,500 in Pasadena Partners Limited Partnership ("Pasadena Partners"). Claimants further alleged that Pasadena Partners was an unsuitable investment for Claimants. Claimants also alleged that Respondent knowingly, intentionally and willfully misrepresented to Claimants that their continued investment in Pasadena Partners was suitable for their retirement goal of a financially secure retirement. Claimants alleged that Respondent continuously and repeated misrepresented the suitability and risk characteristics of Pasadena Partners. In addition, Claimants alleged that Respondent was aware of the Claimant's overall financial unsophistication and lack of financial wherewithal for purposes of the investment in Pasadena Partners.

Respondent maintained that the investment in Pasadena Partners was suitable for Mr. Cowl and was not induced by any misrepresentation or understatement of the risks involved. Respondent next maintained that on July 21, 1985, William Cowl executed a Subscription Agreement and Promissory Note for the purchase of a one-half interest in Pasadena Partners for \$78,500. Respondent also maintained that the Subscription Agreement, executed by William Cowl contained William Cowl's representation that he had received and carefully read and understood the confidential memorandum concerning Pasadena Partners and that he was aware that the investment involved substantial risk factors. Respondent also maintained that Pasadena Partners, which was formed to acquire and operate an apartment complex in Pasadena, Texas, fell victim to the impact of a worsening Texas oil economy and that at all times the limited partners were kept apprised of developments. Respondent maintained that William Cowl's loss was not caused by any misrepresentation or lack of suitability for which Respondent would be held accountable. Respondent also maintained that Claimants' claim was barred by applicable statutes of limitation and Section 15 of the NASD Code of Arbitration Procedure and that Mrs. Cowl was not a proper Claimant in this matter.

**RELIEF REQUESTED**

Claimants requested:

1. An award in the amount of \$128,500.
2. Forum fees.
3. Any other awards which the arbitration panel may deem just and appropriate under the circumstance.

Respondent requested:

1. Claimants' claim be dismissed in its entirety.
2. Forum costs assessed against Claimants.

**AWARD**

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

1. Claimant's claims are denied.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 prehearing session X \$300 = \$300

5 sessions X \$750 = \$3,750

Total Forum Fees due = \$4,050

Forum fees Assessed Against:

1. Claimant is assessed the sum of \$4,050 which represents the total forum fees due, less hearing session deposit paid by Claimant of \$750 leaving \$3,300. Claimant is liable and shall pay to the NASD the sum of \$3,300.

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

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Concurring Arbitrators' Signatures

Name

Public Chairman

Donald G. Hatt, Esq.

Name


Industry Panelist

  
Jay F. Donnaruma

Name

Public Panelist

  
Sheri Lynn Ackerman-Dwyer

  
LINDA M. KONJTSKI  
NOTARY PUBLIC, State of New York  
Qualified in Rensselaer County  
No. 4892247  
Commission Expires May 4, 1995

Date of Decision: January 31, 1995

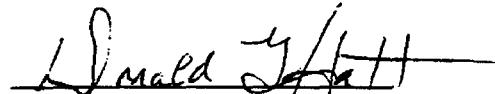
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\_\_\_\_\_

Date of Decision: January 31, 1995

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NASD Award #93-02972

STATE OF: NEW YORK)

SS:

COUNTY OF: ALBANY )

On this 13<sup>th</sup> day of January , 1994, before me personally appeared Donald G. Hatt, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

  
\_\_\_\_\_  
NOTARY PUBLIC

**HELEN P. PORTER**  
Notary Public, State of New York  
Residing in Rensselaer County  
Commission Expires 6 30, 1996

STATE OF:

SS:

COUNTY OF:

On this      day of                      , 1994, before me personally appeared Jay F. Donnaruma known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

\_\_\_\_\_  
STATE OF:

SS:

COUNTY OF:

On this      day of                      , 1994, before me personally appeared Sheri Lynn Ackerman-Dwyer known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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NASD Award #93-02972

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Public Chairman

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Donald G. Hatt, Esq.

\_\_\_\_\_

Name

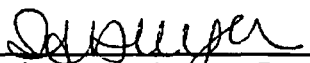
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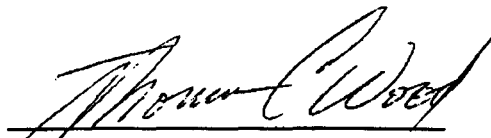
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STATE OF: *NEW YORK*

SS:

COUNTY OF: *ALBANY*

On this *13<sup>th</sup>* day of *January*, 199*4*, before me personally appeared Sheri Lynn Ackerman-Dwyer known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



THOMAS C. WOOD  
Notary Public in the State of New York  
Residing in Albany County  
My Commission Expires *12/31/95*