

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

---

In the Matter of the Arbitration Between

**Name of Claimants**

Dennis D. and Sue A. Brunsting

93-03065

**Name of Respondents**

Dain Bosworth Incorporated  
Tom Dempster

---

**REPRESENTATION**

Claimants Dennis D. and Sue A. Brunsting ("Claimants") were represented by Thomas W. Clayton, Clayton Law Office, Sioux Falls, South Dakota.

Respondents Dain Bosworth Inc. ("Dain Bosworth") and Tom Dempster ("Dempster") were represented by Carol A. Peterson of Dorsey & Whitney, Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on August 4, 1993. Claimants' Submission Agreement signed on July 26, 1993.

Joint Statement of Answer filed by Respondents on October 7, 1993. Submission Agreement filed by Respondent Dain Bosworth on September 29, 1993. Respondent Tom Dempster's Submission Agreement signed on October 4, 1993.

**HEARING INFORMATION**

The hearing was held on August 31, 1994 in Minneapolis, Minnesota for two (2) sessions.

**CASE SUMMARY**

Claimants, Dennis and Sue Brunsting, alleged that Respondents Dain Bosworth and Dempster breached a fiduciary duty to Claimants; committed fraud and misrepresentation; made unsuitable

recommendations; failed to disclose material information; were negligent in the management of the account; and failed to supervise the investment activity properly.

Claimants, more specifically, alleged that Dain Bosworth and Dempster failed to advise them of the risks associated with the suggested investments, and failed to provide Claimants with the information necessary to realize and appreciate those risks on their own. Claimants further alleged that respondents overestimated their net worth and income range, and never sought to ascertain accurate figures. Claimants also alleged that Respondents never notified Claimants that the investments were depreciating.

Respondents in their Answer denied that they defrauded Claimants or breached any fiduciary duty. Respondents also denied that the investments were unsuitable for Claimants, or that the account statements and other documents sent to Claimants misrepresented the value of the investments.

Respondents stated that the products offered were in fact well-suited to Claimants' investment needs, and that Respondent Tom Dempster did not receive a significant amount of commission on the investments and therefore was not motivated by greed in making the recommendations. Respondents offered the following defenses: estoppel, waiver and ratification.

#### **RELIEF REQUESTED**

Claimants requested actual damages in the amount of \$21,000.00; interest in the sum of \$34,504.00; plus arbitration and filing fees of \$650.00.

Respondents requested that the Statement of Claim be denied in its entirety.

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

Respondents Dain Bosworth and Tom Dempster filed a Motion To Dismiss pursuant to Section 15 of the NASD Code of Arbitration Procedure. The Claimants submitted a response. On February 4, 1994, the Director made the initial determination on the motion and denied the motion in part and granted the motion in part.

#### **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. Respondents Dain Bosworth and Tom Brewster shall be and hereby are jointly and severally liable for, and shall pay to the Claimants Dennis and Sue Brunsting, damages in the sum of Seven Thousand Five Hundred Dollars (\$7,500.00).
2. Respondents Dain Bosworth and Brewster shall be and hereby are joint and severally liable for, and shall pay to the Claimants, attorney's fees in the sum of

One Thousand Dollars (\$1,000.00).

3. Request for interest in denied.

4. Each of the parties shall bear their own costs and expenses other than those specifically enumerated under Forum Fees below.

#### **FORUM AND FILING FEES**

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

2 sessions X \$500 = \$1,000 minus hearing session deposit of \$500 = net \$500 due.

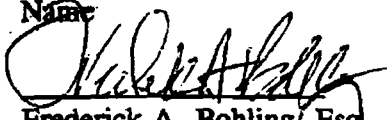
The NASD shall retain the non-refundable filing fee in the amount of \$150.00 and the hearing session deposit in the amount of \$500.00.

The Panel has ordered that the additional forum fees in the amount of \$500.00 shall be paid by Respondents joint and severally. In addition, the Panel has ordered that the Respondents joint and severally shall reimburse to Claimants the amount of forum and filing fees previously deposited by Claimants in the sum of \$650.

Additional forum fees are payable to the National Association of Securities Dealers, Inc.

By the Arbitration Panel

Name

  
Frederick A. Bohling, Esq.  
Presiding, Public Arbitrator

Date

2.21.95

s/s Jacque E. Foust

Jacque E. Foust, Esq.  
Public Arbitrator

11/22/94

s/s Harold E. Gierke

Harold E. Gierke, Esq.  
Industry Arbitrator

11/28/94

Date Award Served by the NASD: 12-20-94.

**N.A.S.D. DISCIPLINARY REFERRAL  
NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimants**

Dennis D. and Sue A. Brunsting

93-03065

**Name of Respondents**

Dain Bosworth Incorporated  
Tom Dempster

**DISCIPLINARY REFERERAL**

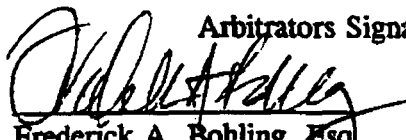
During the course of the hearing held in Minneapolis, Minnesota on August 31, 1994, the undersigned arbitrators heard testimony and evidence which called into questions the following matter:

Testimony during the course of the hearing indicated that Dain Bosworth continued to use par value of the investment units long after such valuation was reasonable or appropriate. This testimony indicates that by Dain Bosworth continuing to artificially inflate and/or misstate the value of the fund, Dain Bosworth knowingly and intentionally was responsible for its investors relying on that information in managing their investments.

This evidence taken during the hearing is referred to the District Office of the NASD to determine whether Dain Bosworth's performance in the above matters was in violation of the NASD Rules of Fair Practice and Resolution 3744 of the Board of Governors for failure to act under the provision of the NASD Code of Arbitration Procedure.

Arbitrators Signature

Date

  
Frederick A. Bohling, Esq.  
Public Arbitrator, Chairperson

2. 21. 95

s/s Jacque E. Foust

Jacque E. Foust  
Public Arbitrator

11/22/94

s/s Harold E. Gierke

Harold E. Gierke  
Industry Arbitrator

11/28/94