

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Donald Heinrich, and
Dorrie Heinrich,
Claimants,

v.

No. 93-03179

CFD Investments, Inc.,
Jerry Jensen, and
Mick Owens,
Respondents

REPRESENTATION OF PARTIES

Claimants Donald & Dorrie Heinrich ("Claimants") were represented by Brian K. Lowe, of Investors Arbitration Services, Inc., Woodland Hills, California.

Respondents CFD Investments, Inc. and Mick Owens ("Respondents") were represented by Sydney L. Steele, Esq., of Lowe, Gray, Steele & Hoffman, Indianapolis, Indiana.

Respondent Jerry Jensen ("Jensen") failed to appear at the hearing.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about July 23, 1993. Claimants' Submission Agreement was signed on May 18, 1993.

Respondents' Statement of Answer filed on or about November 3, 1993. Respondents' Submission Agreements were signed on October 27, 1993.

Jensen failed to file a Statement of Answer and Submission Agreement.

HEARING INFORMATION

Hearing date: November 29, 1994. Two (2) sessions.

Hearing Location: Scottsdale, Arizona.

CASE SUMMARY

Claimants alleged that Respondents and Jensen: made unsuitable investments; breached their contract with the Claimants; violated

the Rules and Regulations of the various exchanges, the customs and usages of the marketplace and/or Illinois law and/or Federal law; failure to supervise Claimants' account; used Claimants' funds in an improper manner; breached their fiduciary duties owed to the Claimants; committed fraud under the provisions of Illinois common law and/or the provisions of the Illinois corporate securities laws, rules and regulations, and/or Federal laws, rules and regulations, including without limitation, Rule 10b-5; and committed negligence through their actions in relation to Claimants' account.

In their Answer, Respondents denied each and every allegation in the Statement of Claim except to the extent specifically admitted or acknowledged therein. In addition, Respondents asserted the following affirmative defenses:

1. Claimants failed to state a claim for which relief may be granted under Section 15 of the Securities Act of 1933, since Respondents were not controlling parties over the actions of Jensen.
2. Claimants have failed to state a claim for which relief can be granted under Section 20(a) of the Securities Exchange Act of 1934 since Respondents were not controlling parties over the actions of Jensen.
3. The claims of the Claimants are barred by the applicable statute of limitations.
4. Claimants have failed to mitigate any alleged damages.
5. Owens had no reason to believe that a materially misleading oral statement was being used in the sale of the security to the Claimants.
6. Owens acted in good faith and did not directly or indirectly induce the act or acts surrounding Jensen's transactions with the Claimants.
7. Jensen was not acting within the scope of his employment with Owens when he entered into the securities transactions with the Claimants.
8. Claimants have failed to state a claim under any viable state or federal and state securities law upon which relief can be granted.
9. Claimants are estopped from asserting any claim with respect to the transactions made in their account or on their behalf.

10. Claimants approved, authorized and ratified each and every transaction made in their account or on their behalf.

11. The Claimants' action is barred by reason of laches and/or waiver.

RELIEF REQUESTED

Claimant requested a joint and several award against all Respondents as follows:

1. Recision of the unregistered securities investments and in the alternative, compensatory damages in an amount of not less than \$80,000.00.
2. Punitive damages in an amount to be determined by the arbitrators.
3. Pre-award and post-award interest at the maximum rate allowed by law from the date of the original investment.
4. For cost of arbitration and expenses including reasonable consulting fees, expert witness fees and any other costs deemed reasonable.

Respondents requested that Claimants Statement of Claim be dismissed in its entirety, for costs of this arbitration and expenses, and for all other costs deemed reasonable.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the panel has determined that Respondent has been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent had received due notice of the hearing as required under Section 26 of the Code, and that the arbitration of the matter would proceed pursuant to Section 29 of the Code.

On November 14, 1994, Claimants filed a Motion to Bar Defenses of Jensen pursuant to Section 25(b) of the Code. Jensen did not file a Response to the motion. The arbitrators heard argument on the motion from the parties present at the hearing. After deliberation, the arbitrators entered a default against Jensen only.

The parties have agreed that the Award in this matter may be executed by 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. Respondent Jerry Jensen is liable for, and shall pay to the Claimants the sum of \$81,000.00 plus interest at the rate of 10 percent per annum from December of 1989, until paid.
2. Claimants claims against Respondent CFD Investments, Inc. are, and each of them, denied and dismissed with prejudice.
3. Respondent Mick Owens is liable for, and shall pay to Claimants the sum of \$40,000.00 plus interest at the statutory rate from the date of this award until paid. All remaining claims against Respondent Mick Owens are denied and dismissed with prejudice.
4. Respondent Jerry Jensen is liable for, and shall pay to the Claimants the sum of \$81,000.00 as satisfaction for their claim of punitive damages.
5. All other claims not specifically enumerated herein are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear their own costs of this arbitration, including attorneys' fees, and costs, except as set forth more specifically below.

Respondent Jerry Jensen is liable for, and shall pay to the Claimants the sum of \$650.00 as satisfaction of their claim for costs of this arbitration.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following forum fees are assessed:

2 hearing sessions x \$500.00 = \$1,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00, and shall RETAIN the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimants.

Additional forum fees in the amount of \$500.00 are assessed against Respondents Mick Owens and Jerry Jensen.

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

CONCURRING ARBITRATORS

Dated:

Name:

December 16, 1994

Jeffrey B. Messing/s/
-Jeffrey B. Messing
Presiding Chair
Public Arbitrator

December 16, 1994

Steven Vakula/s/
Steven Vakula
Public Arbitrator

December 16, 1994

B. Kenneth Olson/s/
B. Kenneth Olson
Industry Arbitrator

Date of Service by the NASD: _____