

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

PATRICIA KIRBY,

Claimant,

v.

NASD No. 93-3435

CAPITAL EQUITIES, INC. and
MICHAEL DESTRO,

Respondents.

Representation

For Claimant: Douglas Martin, Esq., San Francisco, California

For Respondent: Walter Baumgardner, Esq. of Musilli, Baumgardner, Wagner & Parnell,
P.C., St. Clair Shores, Michigan

Case Information

Statement of Claim filed: August 3, 1993

Claimant's Submission Agreement signed: August 30, 1993

Statement of Answer filed on: Michael Destro on January 10, 1994. Respondent Certified
Equities did not file an Answer but appeared at the hearing through counsel.

Respondent's Submission Agreement signed on: Respondents did not file submission
agreements but appeared at the hearing and are subject to the jurisdiction of the National
Association of Securities Dealers (NASD) in accordance with NASD Code of Arbitration
Procedure Section 12.

Hearing Information

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: September 14, 1994/two, September 15, 1994/

Hearing Location: San Francisco, California

Case Summary

Claimant alleged:

Fraud in the offer and sale of securities, breach of fiduciary duty, unsuitability and professional negligence in the recommendation and sale of various securities, including Certified Properties Fund XVI L.P., American Retirement Villas, RIC 23, IEA Income Fund VIII, AIM Series '88, Swift Energy Income III '87-D, Rancon Dev. Fund 6, Oak Harbor Associates, Hill Williams, Inc. Fund I and Towers Financial Group notes.

Claimant has been retired since 1987 and was 65 years of age at the filing of the Statement of Claim. Her previous employment was as marketing and advertising director at Del Monte and had a high school education. She had no investment or finance education or experience. When first solicited by respondents, claimant was 57 years old and earning approximately \$50,000 annually.

Except for the Certified Properties Fund XVI L.P. investment, all the recommendations were made after claimant had decided to retire. Claimant relied totally upon respondents in purchasing and selling securities between 1986 and 1993, and advised them she wanted safe investments for her retirement. Claimant also told respondents she did not want to invest in the stock market because it was too speculative for her.

Respondent Michael Destro filed a Reply to the Statement of Claim which requested dismissal of the claims in accordance with NASD Code of Arbitration Sections 15, 12 and 6. These requests were denied by the NASD and considered by the panel at the hearing.

Respondent Certified Equities, Inc. did not file an Answer but appeared at the hearing through counsel.

Relief Requested

Claimant requested:

1. Compensatory damages in excess of \$200,000;

2. Reasonable return on investment which she would have received if it had been reasonably managed;
3. Treble damages, plus costs and attorneys fees as provided in 18 U.S.C. Section 1964(c);
4. Punitive damages for fraud under California Civil Code Section 3294;
5. Costs under the NASD Code of Arbitration Procedure.

Other Issues Considered and 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 originals remain on file with the NASD.

Respondents made a prehearing request to adjourn dated September 1, 1994 which was denied by the panel.

Claimant made a motion to bar respondents from presenting facts or defenses at the hearing in accordance with NASD Code of Arbitration Section 25(b)(2)(i), which was denied without prejudice to the claimant raising it again on specific points during the arbitration.

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. The claim regarding Certified Properties Fund XVI L.P. is barred by NASD Code of Arbitration Procedure Section 15;

2. On the suitability claim:

- a. With respect to the Oak Harbor Associates investment, respondents are jointly and severally liable for and shall pay claimant \$20,000, plus interest of \$14,416.58 (computed as the legal rate of interest of 10% from the date of sale, June 7, 1988, to September 15, 1994);

- b. With respect to the Hill Williams, Inc. Fund I investment, respondents are jointly and severally liable for and shall pay claimant \$50,000, plus interest of \$14,166.66 (computed as the legal rate of interest of 10% from the date of sale, December 19, 1989 to September 15, 1994, which equals \$23,541.66, less \$9,375 interest received);

- c. With respect to the Tower Financial Group note (3/91), respondents are jointly and severally liable for and shall pay claimant \$50,000, plus interest of \$3,541.66

(computed as the legal rate of interest of 10% from the date of sale. March 1991, to September 15, 1994, which equals \$17,291.66, less \$13,750 interest received);

d. With respect to the Tower Financial Group note (8/92), respondents are jointly and severally liable for and shall pay claimant \$50,000, plus interest of \$2083.33 (computed as the legal rate of interest of 10% from the date of sale, August 1992, to September 15, 1994, which equals \$5,208.33, less \$3,125 interest received);

3. Respondents are jointly and severally liable for and shall pay claimant \$250 for the non-refundable filing fee paid to the NASD;

4. Each and every other claim, including the claim for punitive damages, is denied;

5. The parties shall each bear their respective attorney's fees;

6. The parties shall each bear all other respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall refund the \$1,000 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Respondents, jointly and severally, for the amount of \$2,000,

calculated as follows: two hearing sessions at \$1,000/hearing session, equals \$2,000.

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

Arbitration Panel

Name

Public/Industry

Jane Soden

Public

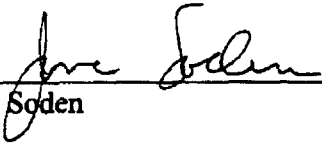
John Collentine

Public

Linda Blackwell

Industry

Concurring Arbitrators' Signatures



Jane Soden

John Collentine

Linda Blackwell

Date of Decision:

Date Served: 09/30/94

Concurring Arbitrators' Signatures

Jane Soden



John Collentine

Linda Blackwell

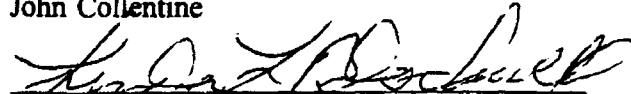
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