

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Robert A. Lamminen

93-03539

Name of Respondents

Dain Bosworth Inc. and Robert Bayless

REPRESENTATION OF PARTIES

Claimant, Robert Lamminen ("Lamminen") was represented at the hearing by Rebecca E. Bender, Esq. of Rebecca E. Bender & Associates, P.A., Minneapolis, Minnesota.

Respondents, Dain Bosworth, Inc. ("Dain") and Robert Bayless ("Bayless") were represented at the hearing by J. Thomas Vitt, Esq. of Dorsey & Whitney, Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on September 8, 1993. Submission Agreement of Claimant was signed on August 17, 1993.

Joint Statement of Answer was filed by Respondents on December 20, 1993. Submission Agreement of Respondent Dain was signed on December 14, 1993. Submission Agreement of Respondent Bayless was signed on December 15, 1993.

HEARING INFORMATION

The hearing was held on July 13, 1994 for two sessions, July 14, 1994 for two sessions, and on July 20, 1994 for two sessions in Minneapolis, Minnesota for a total of six sessions.

CASE SUMMARY

Claimant Lamminen alleged that Respondents Dain and Bayless, invested Lamminen's monies in Colonial Option Income Fund, National Security Bond Fund and Benedict Nuclear, Denver. Lamminen alleged that Dain and Bayless misrepresented the inherent risks in these investments and concealed the true value of the investments and the character of the investments, including their lack of liquidity and the prerogative of the fund managers to change the nature of the assets without the approval of each fund purchaser. Lamminen also alleged that Dain and Bayless told him that no principal would be at risk and that the return would be good. Lamminen set forth

the following causes of actions in his claim: violation of Section 80A.01 of the Minnesota Blue Sky laws, breach of contract and NYSE Know Your Customer Rule, violation of Minn. Stat. Sec. 325F.68, common law fraud, negligent misrepresentation/negligence, breach of fiduciary duty against Bayless, common law rescission, and respondeat superior.

Respondents, Dain and Bayless stated in their Answer to the Claim that Lamminen understood what he was purchasing at all times and Bayless was careful to discuss the characteristics and risks of each investment before Lamminen made any purchase decisions. Dain and Bayless stated that Lamminen was and is a smart and experienced businessman, fully capable of understanding and managing his investments. Dain and Bayless also stated that the claims are barred by Section 15 of the N.A.S.D. Code of Arbitration Procedure.

RELIEF REQUESTED

Claimant requested out-of-pocket losses, twice the amount paid as commissions, market adjusted damages, rescission of Claimant's mutual fund and Benedict Nuclear purchases, punitive damages, attorney's fees, prejudgment interest, post-judgment interest, costs, filing and hearing fees disbursements, and other further relief as the panel deems just and equitable, including but not limited to a disciplinary referral.

Respondents requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Counsel for Respondents filed a Motion To Dismiss pursuant to Section 15 of the N.A.S.D. Code of Arbitration Procedure and counsel for claimant filed a response thereto. The Director granted the motion as to any allegations of wrongdoing made prior to September 8, 1987 and denied the motion as to any allegations of wrongdoing made on or after September 8, 1987.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Dain Bosworth, Inc. and Robert Bayless shall be and hereby are, jointly and severally liable for, and shall pay to the claimant, Robert Lamminen, damages in the amount of Thirty Thousand, Three Hundred Eighty Nine Dollars and Twenty Seven Cents (\$30,389.27);

2. Respondent, Dain Bosworth, Inc. shall be and hereby is liable for, and shall pay to the claimant, Robert Lamminen, attorney's fees in the amount of Five Hundred Dollars (\$500.00). The panel awarded attorney's fees to the claimant as a result of costs incurred for Dain Bosworth's failure to timely respond to claimant's discovery requests;

3. All other requests not specifically addressed herein are denied;

4. Each of the parties shall bear their own costs and expenses other than those specifically enumerated for herein.

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 (x 6 sessions minus hearing session deposit of \$750 = 5 sessions x \$750) = net \$3750 due.

The panel has ordered that Respondent, Dain Bosworth, Inc. pay to the N.A.S.D., additional forum fees in the amount of \$3750.

Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Jack D. Elmquist s/s

Dated:

July 27, 1994

Jack D. Elmquist, Esq.
Public Arbitrator, Presiding Chair

Piedad A. Bernikow s/s
Piedad A. Bernikow, Esq.
Public Arbitrator

July 27, 1994

Neil T. Treger s/s
Neil T. Treger
Industry Arbitrator

July 27, 1994

Date Award Served By The N.A.S.D.: July 29, 1994