

## NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Robert W. and Marilyn J. Johnson

and

93-03961

Name of Respondent

Curtis R. LeValley  
Geneva Securities, Inc.  
Howe Barnes Investments, Inc.

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### REPRESENTATION OF PARTIES

Robert W. and Marilyn J. Johnson ("**Claimants**") were represented by Dennis Waldon, Esq., Lavin & Waldon, Chicago, Illinois.

Curtis R. LeValley ("**Respondent LeValley**") and Howe Barnes Investments, Inc. ("**Respondent Howe Barnes**") were represented by Howard S. Suskin, Esq., Jenner & Block, Chicago, Illinois.

Geneva Securities, Inc. ("**Respondent Geneva**") was represented by Paul F. Donahue, Esq., Seyfarth Shaw Fairweather & Geraldson, Chicago, Illinois.

### CASE INFORMATION

The Statement of Claim was filed on or about September 30, 1993. Submission Agreement of Claimants Robert W. and Marilyn J. Johnson was signed on September 20, 1993.

Statement of Answer was filed by Respondents Curtis R. LeValley and Howe Barnes Investments, Inc. on or about January 10, 1994.

Statement of Answer was filed by Respondent Geneva Securities, Inc. on or about January 28, 1994.

### HEARING INFORMATION

Pre-hearing conferences were held on May 17, 1995 for one (1) session and June 7, 1995 for one (1) session with John W. Jerak, Esq., presiding.

The hearing was held on November 10, 1995 for two (2) sessions, December 4, 1995 for one (1) session, and December 16, 1995 for two sessions in Chicago, Illinois for a total of five (5) hearing and two (2) pre-hearing sessions.

### CASE SUMMARY

Claimant alleged that when Mr. Johnson retired in February, 1989, they restated to Respondent LeValley that their investment objectives were the safety and preservation of their principal in insured investments, or the equivalent, and that the dividends from their accounts would constitute their living expenses. Claimant alleged that at that time, Respondent LeValley stated that he understood their conservative investment objectives and the fact that the dividends from their accounts would provide their living expenses. Claimants also alleged that Respondents LeValley placed speculative and unsuitable investments into their accounts. Specifically, Claimants alleged that Respondent LeValley while employed by Respondents Geneva Securities and Howe Barnes Investments, Inc., misrepresented to them that the following investments were safe, insured and consistent with their investment objectives:

- ▶ RAL Yield + Equities IV Limited Partnership
- ▶ Datronic Equipment Income Fund XVI
- ▶ Krupp Insured Mortgage Limited Partnership
- ▶ First Capital Insured
- ▶ Southern Housing Investment Ltd.
- ▶ Towers Financial Corporation Notes
- ▶ Nikkei Call Warrants
- ▶ Phoenix Capital Assurance Fund
- ▶ Canton Woods Partnership
- ▶ Insured Income Prop. 85
- ▶ Participating Income Prop. 86
- ▶ The Equity Hedge Fund: Series I, Ltd.
- ▶ Flying J Truck Stops, and
- ▶ Master Mortgage.

It was alleged that the actions of Respondents constituted violations of §10(b) of the Securities Exchange Act of 1934 and Rule 10b-5; breach of contract; violations of the Illinois Securities law of 1953; common law fraud; breach of fiduciary duty; violations of the Illinois Consumer Fraud and Deceptive Business Practices Act; and negligence.

Respondents LeValley and Howe Barnes denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimant are experienced investors and business people who made the decision to purchase their investments willingly and with full knowledge of each investment's characteristics and inherent risks in order to satisfy their investment objectives, which included primarily, the desire to maximize income. Respondents LeValley and Howe Barnes further stated that the Statement of Claim fails to mention the limited partnership investments that the

Claimants made prior to their introduction to Mr. LeValley and ignores the other investments that the Claimants purchased through Mr. LeValley in bond funds and certificates of deposit that served to diversify their portfolio. In addition, Respondents LeValley and Howe Barnes asserted numerous affirmative defenses including but not limited to:

- ▶ the claims are barred under applicable statutes of limitation;
- ▶ the claims are barred by the doctrines of ratification, estoppel and/or waiver; and
- ▶ failure to mitigate.

Respondent Geneva adopted the response filed by Respondents LeValley and Howe Barnes and also stated that the Claimants had represented on the account opening documentation that they had experience investing in real estate limited partnerships, stock and bonds; attended seminars on taxes and investing; read financial publications; and consulted with tax and investment advisors. In addition, respondent Geneva stated, that Claimant Robert Johnson was a successful businessman and held a senior sales position prior to his retirement; the Claimants have significant real estate holdings in several states; and now operate a custom framing and art gallery. Respondent Geneva also asserted affirmative defenses.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of at least \$150,000, interest, filing fees, costs, including their reasonable attorneys' fees incurred in connection with this matter, and further relief as the arbitrators will allow.

Respondents LeValley and Howe Barnes requested that the Claimants take nothing by their statement of claim; that the claims asserted against them be dismissed and an award entered in favor of Respondents LeValley and Howe Barnes and against the Claimants; and that they be awarded their costs.

Respondent Geneva requested that the panel deny the claims in their entirety, award it costs and attorneys' fees, and order such other relief as the panel deems just.

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

Respondents Curtis R. LeValley, Geneva Securities, Inc., and Howe Barnes Investments, Inc. did not file with the NASD a properly executed submission to arbitration but are required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and presented testimony at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

### **AWARD**

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

1. Respondents Geneva Securities, Inc. and Curtis LeValley shall be and hereby are jointly and severally liable for and shall pay to the Claimants Robert W. and Marilyn J. Johnson the sum of **Eighty thousand dollars (\$80,000)**.
2. Respondents Howe Barnes Investments, Inc. and Curtis R. LeValley shall be and hereby are jointly and severally liable for and shall pay to the Claimants Robert W. and Marilyn J. Johnson the sum of **Seventy five thousand dollars (\$75,000)**.
3. No interest is awarded on the above stated sums.
4. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$300 and five (5) sessions x \$1,000 = \$5,600 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD by the Claimants Robert W. and Marilyn J. Johnson. Claimants Robert W. and Marilyn J. Johnson shall be and hereby are liable for and shall pay to the NASD the sum of \$1,800 and Respondents Curtis R. LeValley, Geneva Securities, Inc., and Howe Barnes Investments, Inc. shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$2,800 as the balance due for forum fees.

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

*Dated:*

**/s/ John W. Jerak, Esq.**

John W. Jerak, Esq.  
Public Arbitrator, Presiding Chair

**March 8, 1996**

**/s/ Michael S. Matek, Esq.**

Michael S. Matek, Esq.  
Public Arbitrator

**March 4, 1996**

**/s/ Ted W. Baer**

Ted W. Baer  
Industry Arbitrator

**March 25, 1996**