

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Alarik J. and Willanetta H. Bakk

93-04099

Names of Respondents

The Principal/Eppler Guerin & Turner, Inc.
and John Wayne Ezell

REPRESENTATION

Claimants, Alarik J. and Willanetta H. Bakk were represented by Terrence M. Fruth, Esq. and Vincent D. Louwagie, Esq. of Fruth & Anthony, P.A., Minneapolis, MN.

Respondent, The Principal/Eppler, Guerin & Turner, Inc. was represented by William Sims, Esq. and Steven T. Baron, Esq. of Vinson & Elkins, Dallas, TX.

Respondent, John Wayne Ezell appeared pro se.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on October 6, 1993.

Claimants, Alarik J. and Willanetta H. Bakk's Submission Agreement was signed on September 29, 1993.

A Statement of Answer was filed with the NASD by Respondent, The Principal/Eppler, Guerin & Turner, Inc. on November 29, 1995.

Respondent, Eppler, Guerin & Turner, Inc.'s Submission Agreement was signed on November 24, 1993 by Brian J. Hurst, Esq., Senior Vice President.

A Statement of Answer was filed with the NASD by Respondent, John Wayne Ezell on December 13, 1993.

Respondent, John Wayne Ezell's Submission Agreement was signed on January 25, 1994.

HEARING INFORMATION

A pre-hearing conference with the panel chairperson was held on July 27, 1994.

The hearing took place on the following days:

- October 18, 1994 for two (2) hearing sessions;
- October 19, 1994 for two (2) hearing sessions;
- June 13, 1995 for two (2) hearing sessions; and,
- June 14, 1995 for one (1) hearing session.

The hearing location was Minneapolis, Minnesota.

CASE SUMMARY

Claimants, Alarik J. and Willanetta H. Bakk ("the Bakks") alleged that they were unsophisticated investors with limited assets who trusted Respondents, The Principal/Eppler, Guerin & Turner, Inc. ("P/EGT") and John Wayne Ezell ("Ezell") to invest a majority of their life savings in a prudent manner. Instead, the Bakks asserted that most of their life savings were lost through large portfolio losses and high commission fees. The Bakks sought recovery from P/EGT and Ezell for misrepresenting the expected rate of return and the risk involved in the recommended investments, the purchase of unsuitable investments for the Bakk's account and excessive trading or "churning" which occurred in their account.

P/EGT and Ezell denied the allegations of the claim and asserted that the Bakks understood and accepted the risks of their account activity, that their trading activity was consistent with the securities positions they transferred into P/EGT when they opened their account, that the Bakks' losses were not caused by extensive trading or unsuitable investments but by market factors attendant to the stock market crash of October of 1987. P/EGT and Ezell alleged that the Bakk's claims were stale and untimely pursuant to Section 15 of the NASD Code of Arbitration Procedure ("the NASD Code") having been filed four (4) years after the time the Bakks closed their account with P/EGT.

RELIEF REQUESTED

The Bakks requested damages of at least \$77,721.00, return on their investment in the amount of \$46,602.00, commission charges in the amount of \$14,700.00, margin interest, punitive damages, attorney's fees, costs and expenses incurred in the arbitration and such other relief as the panel deemed appropriate.

P/EGT and Ezell requested dismissal of the claim and an award of their costs incurred

to defend the matter.

OTHER ISSUES CONSIDERED & 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.

The NASD issued a preliminary ruling on Respondents' Motion to Dismiss pursuant to Section 15 of the NASD Code. Subsequently, there was litigation in both state and federal court and the issue of the applicability of Section 15 of the Code was referred to the arbitration panel in this matter.

Claimants orally and by their memorandum of points and authorities dated June 12, 1995 argued a theory of recovery resting on the Minnesota Consumer Fraud Act. The panel accepted the amendment to the claim based upon this theory.

AWARD

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

1. Respondents, The Principal/Eppler, Guerin & Turner, Inc. and John Wayne Ezell are jointly and severally liable for and shall pay to Claimants, Alarik and Willanetta Bakk, the sum of Fourteen thousand one hundred twenty-four dollars and no cents (\$14,124.00);
2. Interest at the rate of 6% will accrue on the above stated sum from and inclusive of February 9, 1989 to and inclusive of the date the award is paid;
3. Respondents, Eppler, Guerin & Turner, Inc. and John Wayne Ezell are jointly and severally liable for and shall pay to Claimants, Alarik and Willanetta Bakk, the sum of Ten thousand and no dollars (\$10,000.00) as costs and attorney's fees. Authority for the award of attorney's fees is found in Minn. Stat. 8.31 Subd. 3a; and,
4. The request for punitive damages is specifically denied and dismissed in its entirety and any other claim for relief not specified herein is also specifically denied and dismissed in its entirety.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit previously made with the NASD by Claimants. Respondent, P/EGT shall reimburse Claimants for the fees they paid to the NASD. Respondent, P/EGT is assessed additional Forum Fees in the amount of \$4800.00.

Forum Fees were calculated at the rate of \$750.00 per hearing session for seven (7) hearing sessions and \$300.00 for the single session pre-hearing conference for a total of \$5550.00 in Forum Fees. Additional Forum Fees assessed by the panel of arbitrators are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/ D. Randall Blohm
D. Randall Blohm, Esq.
Presiding Chairperson
Public Arbitrator

August 30, 1995
Dated

/s/ Howard James Seesel, Jr.
Howard James Seesel, Jr.
Panelist
Public Arbitrator

August 31, 1995
Dated

/s/ Edward C. Oliver
Edward C. Oliver
Panelist
Industry Arbitrator

August 30, 1995
Dated

For NASD Use Only
Date Award Served on the Parties: August 31, 1995