

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Geraldine De Nunzio

93-04328

Name of Respondents

Martin Kopstein
Harold Ahrens
Kopstein Van Alen & Company
Newbridge Securities Inc.

REPRESENTATION

For Claimant Geraldine De Nunzio ("Claimant") appeared Lynn Hanig, Esq. from the law firm of Lynn Hanig, P.C. located in Poughkeepsie, New York.

For Respondents Martin Kopstein ("Kopstein") and Kopstein Van Alen & Company ("Kopstein Van Alen") appeared Jonathan C. Thau, Esq. from the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker located in New York, New York.

For Respondent Newbridge Securities Inc. ("Newbridge") appeared Lawrence J. Slattery, Esq. of Citibank N.A. located in New York, New York.

Respondent Harold Ahrens ("Ahrens") did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: October 15, 1993.

Claimant's Submission Agreement signed on: October 15, 1993.

Respondent Kopstein's and Kopstein Van Alen's Joint Statement of Answer filed: January 20, 1994.

Respondent Kopstein's Submission Agreement signed on: January 18, 1994.

Respondent Kopstein Van Alen's Submission Agreement signed on: January 18, 1994.

Respondent Newbridge's Statement of Answer, Cross Claim and Counterclaim filed: January 19, 1994.

Respondent Newbridge's Submission Agreement signed on: January 19, 1994.

Respondent Ahrens did not submit a Statement of Answer or a Submission Agreement.

HEARING INFORMATION

| | | | |
|-------------------------|--------------|---|--------------|
| Hearing Dates/Sessions: | May 15, 1995 | - | Two Sessions |
| | May 16, 1995 | - | Two Sessions |

The hearings were held at the offices of the National Association of Securities Dealers, Inc., located in New York City, New York.

CASE SUMMARY

Claimant alleged that, as an unsophisticated investor and upon the advice of an investment officer at a local bank, she contacted Robert Van Nostrand ("Van Nostrand") at Mabon, Nugent & Co. ("Mabon"), the predecessor firm to Respondent Kopstein Van Alen. After meeting with Van Nostrand to discuss investment of the proceeds from Claimant's husband's life insurance policy, Claimant alleged that she informed Van Nostrand that the funds had to be placed in liquid, risk-free instruments. The \$100,000 life insurance proceeds were invested as follows: \$25,000 in a money market, \$50,000 in GNMA and \$25,000 in a convertible bond. Claimant further alleged that such these investment complied with her stated objectives.

Claimant alleged that Respondent Ahrens took over account when Van Nostrand subsequently left the employ of Mabon. Claimant also alleged that she reiterated to Ahrens that she did not wish to place the principal of her account in any risk-associated investment. Claimant asserted that, in March 1986, Ahrens began to trade options in her account and continued to do so until January 1988. Claimant further asserted that she did not understand that Ahrens was trading in options and that the risks associated with such an investment was not explained to her. Claimant also alleged that on several occasions she inquired about her account and was assured on each occasion that everything was going well.

Claimant alleged that, on November 4, 1987, Ahrens contacted her and told her that she had to sell everything in her account if she wanted keep any money and that he needed Claimant's permission to sell. Claimant further alleged that she was shocked and authorized Ahrens to do what he had to save the account. Claimant asserted she was contacted by Ahrens one week later and informed that she had about \$20,000 left in the account. Claimant maintained that she told Ahrens not to take any further action on the account, but that, despite this specific direction, Ahrens conducted several more trades on Claimant's behalf.

Claimant alleged that Respondents Ahrens, Kopstein and Kopstein Van Alen failed to exercise due diligence with respect to her account and that Respondents failed to adequately know their client and that as a result, part of her assets were placed in unsuitable investments which were

speculative, illiquid margin and option accounts. Claimant further alleged that Respondent Newbridge deliberately and willfully designed their account statements in such a format as to conceal the types of investments in the account.

In their Joint Statement of Answer, Respondents Kopstein and Kopstein Van Alen maintained that the claims are entirely frivolous on the merits. Respondents Kopstein and Kopstein Van Alen further maintained that when Claimant was previously a client of Mabon she executed a margin and option agreement with Respondent Ahrens and that Claimant engaged in a conservative strategy of buying convertible bonds and selling covered calls against the underlying security. Respondent also maintained that after Mabon sold its Poughkeepsie office, Claimant executed new margin and option agreements where the same strategy was followed.

Respondents Kopstein and Kopstein Van Alen maintained that Claimant's allegations of damages were frivolous because Claimant withdrew \$58,886.28 from the account and ultimately transferred more than \$17,000 out of the account representing an amount more than Claimant invested.

Respondent Newbridge maintained they provided clearing services for Kopstein Van Alen from February 17, 1989 to February 1993. Respondent further maintained that it had no independent relationship with Claimant; it provided no advice to Claimant; and that it had no obligation to review and pass judgment on the suitability of each trade it cleared for Claimant's account.

As affirmative defenses, Respondent Newbridge maintained that the Statement of Claim failed to state a cause of action against Newbridge; that it was ineligible for arbitration pursuant to Section 15 of the Code of Arbitration Procedure; and that it was barred by the doctrines of laches, estoppel, ratification, contributory negligence, waiver, and consent.

Respondent Newbridge asserted a cross claim against Respondents Kopstein, Kopstein Van Alen and Ahrens for indemnification in the event that Newbridge is charged with liability for any loss to have been incurred by Claimant. Respondent Newbridge further asserted a counterclaim for the costs of its defense, including, but not limited to, reasonable attorney's fees.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$75,000, damages in an amount equal to a reasonable rate of return, return of all commissions, reimbursement for all losses, interest from the date of loss, reasonable attorneys' fees, and punitive damages as may be awarded by the panel.

Respondents Kopstein and Kopstein Van Alen requested that the Statement of Claim be dismissed in its entirety and that the panel assess forum fees against Claimant.

Respondent Newbridge requested the dismissal of the Statement of Claim, attorneys fees and that costs and disbursements be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The panel of arbitrators found that Respondent Ahrens did not receive service of the Statement of Claim, in accordance with Sections 25(a) and (c) of the Code of Arbitration Procedure. Therefore, Respondent Ahrens was dismissed from the case without prejudice.

At the hearing, Respondent Newbridge was dismissed from the case by stipulation of the parties.

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.

AWARD

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

1. The GNMA investment was suitable for Claimant and that there was no violation of the know-your-customer rule with respect to this investment.
2. Claimant failed to prove actual damages with respect to the initial \$75,000 investment.
3. All claims against Respondents Kopstein and Kopstein Van Alen be and hereby are dismissed in their entirety.
4. Each party shall bear their respective costs, including attorney's fees.
5. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 non-refundable filing fee submitted by Claimant and have assessed the following forum fees:

$$4 \text{ sessions} \times \$ 500.00 = \$ 2,000.00$$

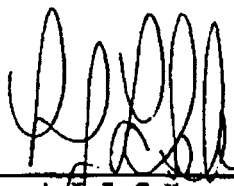
1. Claimant be and hereby is liable for the sum of \$1,000.00, representing one-half of the forum fees assessed. Claimant previously deposited the sum of \$500.00 with the NASD which shall be applied towards the forum fees assessed. Therefore, Claimant is liable and shall pay to the NASD the sum of \$500.00.
2. Respondent Kopstein Van Alen be and hereby is liable and shall pay to the NASD the sum of \$1,000.00, representing one-half of the forum fees assessed.

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

ARBITRATORS' SIGNATURES

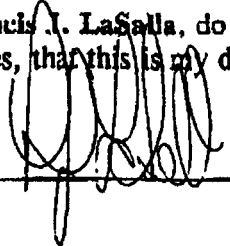
James Dolan, Esq.
Public Chairperson

Anne Cugliani
Public Arbitrator



Francis J. LaSalla
Industry Arbitrator

I, Francis J. LaSalla, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.



Date of Decision: July 24, 1995

ARBITRATORS' SIGNATURES

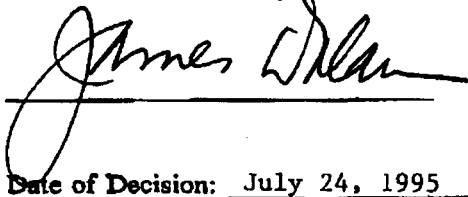


James Dolan, Esq.
Public Chairperson

Anne Cugliani
Public Arbitrator

Francis J. LaSalla
Industry Arbitrator

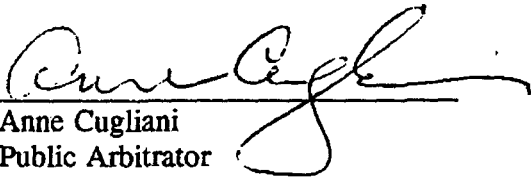
I, James Dolan, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above captioned matter.



Date of Decision: July 24, 1995

ARBITRATORS' SIGNATURES

James Dolan, Esq.
Public Chairperson



Anne Cugliani
Public Arbitrator

*Proven to before me this
24th day of July 1995
Dorothy S. Ogar*

DOROTHY S. OGAR
Notary Public, State of New York
No. 52-8200218, Suffolk Co.
Commission Expires 8/31/1996

Francis J. LaSalla
Industry Arbitrator

I, **Anne Cugliani**, do hereby affirm, pursuant to Article 7507 of the Civil Procedure Laws & Rules, that this is my decision in the above-captioned matter.

Date of Decision: July 24, 1995