

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Incarinate Word Hospital, Inc.

93-04498

Name of Respondents

Westcap Government Securities, Inc.
Jeff Riesenfeld

REPRESENTATION

For Claimant: Incarnate Word Hospital, Inc. ("Claimant") was represented by Raymond W. Henney, Esq. of Honigman Miller Schwartz & Cohn, located in Detroit, Michigan.

For Respondents: Westcap Government Securities, Inc. ("Westcap") and Jeff Riesenfeld ("Reisenfeld") were represented by Lonny J. Hoffman, Esq. of Beck, Redden & Secrest, located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: October 29, 1993.

Claimant's Submission Agreement signed on: November 11, 1993 by Linda Allin, Interim Chief Executive Officer, Incarnate Word Hospital, Inc..

Statement of Answer filed by Respondents, Westcap Government Securities, Inc. and Jeff Riesenfeld on: January 20, 1994.

Respondents, Westcap Government Securities, Inc. and Jeff Riesenfeld's Submission Agreement signed on : January 18, 1994 by Ira H. Green, Chairman of the Board, Westcap Government Securities, Inc. and Jeff Riesenfeld.

HEARING INFORMATION

Pre-Hearing Conference: None Held.
Hearing Dates/Sessions: October 11, 1994 for Two (2) Sessions; and
October 12, 1994 for Three (3) Sessions.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimant Incarnate Word Hospital, Inc. alleged that Jeff Riesenfeld, a Registered Representative employed by Westcap, made false representations to Claimant in order to place its funds in unsuitable investments and excessively traded Claimant's account. The Claimant specifically alleged that:

1. Claimant's investment policies required the portfolio of the hospital to be principally composed of conservative, liquid investments. Riesenfeld and Westcap were made aware that liquidity and safety were the primary objectives of the Fund created by Claimant;
2. Nevertheless, Riesenfeld purchased highly complex collateralized mortgage obligations (CMO) for Claimant's account. Riesenfeld misrepresented the nature of many of these CMO investments, stating that they were liquid government-backed securities that were of the same quality as treasury bills and other principal safe investments. Claimant relied upon such statements and followed the recommendations of Riesenfeld;
3. Specifically, Riesenfeld persuaded Claimant to invest a full 15% of its funds (\$1.6 million) in the highly risky and volatile CMO Remnant "tranche"; this investment was completely unsuitable for Claimant, as it was one of the most risky CMO investments available;
4. Respondents had Claimant's account excessively trading CMO's to supposedly generate better returns; however, only unconscionable commissions resulted.

Based on the above allegations, Claimant asserted claims against Respondents for misrepresentation; fraud; churning; breach of fiduciary duty; and negligence. Claimant also asserted claims for violation of the Texas Securities Act (Art. 581-33); the Missouri Securities Act [§409.411(a), RSMO 1986]; *respondeat superior*; and controlling person liability.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. Claimant's written Investment Policy explicitly recognized the need to incur

risk to earn higher returns; this policy was repeatedly expressed by Claimant's internal investment executive;

2. Claimant had a long history of investing in CMO's and was experienced nor knowledgeable. Claimant had traded in CMO's on many occasions and over a long period of time (36 months), both with Westcap and its previous broker/dealer;

3. There were absolutely no misrepresentations made to Claimant regarding its investments. Claimant was fully aware of the risks involved in CMO investments and was willing to assume these risks during the time the investments were profitable;

4. Riesenfeld did not excessively trade Claimant's account; Riesenfeld did not exercise control over the account, nor did he trade with intent to defraud or willful and malicious disregard for Claimant's interests. Claimant was provided with full information and detailed reports regarding its account.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents Westcap and Riesenfeld in the amount of \$1,631,289.87, plus the return which would have been received had Respondents recommended suitable investments; damages for Respondents' wrongful churning of the account; punitive/exemplary damages; treble damages; and reasonable attorney's fees, costs, and expenses.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the Respondents be awarded all costs and attorney's fees that they have incurred in this 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.

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 Westcap Government Securities, Inc. and Jeff Riesenfeld are jointly and severally liable for and shall pay to the Claimant Incarnate Word

Hospital, Inc. the sum of \$926,000.00;

2. The claims for interest, punitive damages, RICO trebled damages, attorney's fees and costs are dismissed and denied in their entirety;

3. The parties shall bear their own costs of arbitration, except for those specifically enumerated herein; and

4. Any relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed. Five (5) Hearing Sessions x \$1,500.00 per session = \$7,500.00; Total Forum Fees = \$7,500.00.

The National Association of Securities Dealers, Inc. shall retain the \$300.00 Claim filing fee and the \$1,500.00 hearing session deposit previously deposited by the Claimant. Respondents Westcap Government Securities, Inc. and Jeff Riesenfeld are jointly and severally liable for and shall pay to the NASD the sum of \$6,000.00 as additional forum fees. In addition, Respondents are jointly and severally liable for and shall pay to Claimant Incarnate Word Hospital Inc. the sum of \$1,500.00 as reimbursement of the hearing session deposit previously deposited with the NASD. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/s/ Keith D. Patten, Esq.
Keith D. Patten, Esq.
Public Arbitrator
Chairperson

November 28, 1994

/s/ Bryan Goetz
Bryan Goetz
Public Arbitrator

November 28, 1994

/s/ Donald C. Bernstein, Esq.
Donald C. Bernstein, Esq.
Industry Arbitrator

November 28, 1994

For NASD Use Only

Date of Service of Award: December 5, 1994