

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Janeen Ashby

93-04839

Name of Respondents

Berthel Fisher and Company Financial Services, Inc. and Craig Halfpop

REPRESENTATION OF PARTIES

For Claimant, Janeen Ashby ("Claimant") at the hearing: Martin Petersen, Esq. of Klinkenborg, Hansmann & Mansheim, Parkersburg, Iowa.

For Respondents, Berthel Fisher and Company Financial Services, Inc. ("Berthel") and Craig Halfpop ("Halfpop") at the hearing: Brian L. Campbell, Esq. of Bradshaw Fowler Proctor & Fairgrave, P.C., Des Moines, Iowa.

CASE INFORMATION

Statement of Claim filed on November 22, 1993. Claimants' Submission Agreement signed on October 20, 1993.

Joint Statement of Answer filed by Respondents on February 1, 1994. Respondent, Berthel Fisher and Company Financial Service, Inc.'s Submission Agreement signed on January 25, 1994.

HEARING INFORMATION

The hearing was held on August 30, 1994 for two (2) sessions in Minneapolis, Minnesota.

CASE SUMMARY

Claimant alleged that Respondent, Berthel, through its agent, Halfpop, recommended and purchased VMS Strategic Land Fund II and VMS Mortgage Investors limited partnership III, both of which were unsuitable given claimants financial status and lack of investment sophistication. Claimant set forth the following claims for relief: negligent misrepresentation, fraud, breach of fiduciary duty, violation of Iowa Code Sections 502.41 and 502.502, and suitability.

Respondents, Bethel and Halfpop, deny each and every allegation contained in the claim. Bethel and Halfpop stated that claimant was advised of the risks included in the prospectus concerning VMS Strategic Land Fund II. Berthel and Halfpop alleged that claimant did not receive a prospectus concerning VMS Mortgage Investors Partnerships III since she purchased it in the secondary market. However, they alleged claimant was informed of the risks and limitations of the investment.

RELIEF REQUESTED

Claimant requested damages in the sum of \$18,538.00 plus interest at 8% per year, less the market value of the investments at the time of the award, \$5000 for costs and attorney's fees and \$6000 for punitive damages.

Respondents requested that claimant take nothing by her statement of claim and that they be awarded their costs, attorney's fees, and other further relief as may be proper.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed by 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 remains 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, Berthel Fisher and Company, Inc. and Craig Halfpop shall be and hereby are, jointly and severally liable for, and shall pay to the Claimant, Janeen Ashby, damages in the sum of Eighteen Thousand, Five Hundred Thirty Eight Dollars and No Cents (\$18,538.00);
2. Respondents, Berthel Fisher and Company, Inc. and Craig Halfpop are also jointly and severally liable for, and shall pay to the Claimant, Janeen Ashby, interest in the amount of the Award of \$18,538.00 at seven (7) percent from January 15, 1988 until the Award is paid by Respondents;
3. Claimant's request for punitive damages is denied;
4. Claimant's request for attorney's fees is denied;

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions x \$300 = \$600

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$100, and shall retain the hearing session deposit in the amount of \$300 previously paid to the NASD by Claimant.

Respondents shall jointly and severally, pay additional forum fees to the NASD in the sum of \$300.

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

By The Arbitrator:

Dated:

September 16, 1994

s/s Casandra Mihalchick
Casandra Mihalchick, Esq.

Date Award Served By The NASD: October 17, 1994.