

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Janet Folsom

and

93-05253

Name of Respondent

Premier Planning Associates, Inc.
Financial Network Investment Corp.
Linda Walker

REPRESENTATION OF PARTIES

Janet Folsom ("**Claimant**") was represented by Paul G. Bursiek, Esq., Pendleton & Sabian, P.C., Denver, Colorado.

Premier Planning Associates, Inc. ("**Respondent Premier**") and Linda Walker ("**Respondent Walker**") were represented by Stuart N. Bennett, Esq., Krendl, Horowitz & Krendl, Denver, Colorado.

Financial Network Investment Corp. ("**Respondent Financial**") was represented by Tucker K. Trautman, Esq., Ireland, Stapleton, Pryor & Pascoe, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about December 21, 1993. Submission Agreement of Claimant Janet Folsom was signed on December 14, 1993.

Statement of Answer was filed by Respondent Premier Planning Associates, Inc. on or about April 22, 1994. Submission Agreement of Respondent Premier Planning Associates, Inc. was signed on April 8, 1994 by Steve Mercer.

Statement of Answer was filed by Respondent Financial Network Investment Corp. on or about March 23, 1994. The undated Submission Agreement of Respondent Financial Network Investment Corp. was signed by John Simmers.

Statement of Answer was filed by Respondent Linda Walker on or about April 22, 1994. Submission Agreement of Respondent Linda Walker was signed on April 7, 1994.

HEARING INFORMATION

The hearing was held on December 6, 1994 for two (2) sessions, December 7, 1994 for two (2) sessions, January 4, 1995 for two (2) sessions and January 5, for three (3) sessions in Denver, Colorado for a total of nine (9) sessions.

CASE SUMMARY

Claimant alleged that Respondents breached their fiduciary duty to the Claimant by acting deceitfully and with reckless disregard for her financial well being. Specifically, Claimant alleged that Respondents recommended to her, an inexperienced and unsophisticated investor, that she invest a substantial portion of her portfolio into illiquid and highly risky investments. These investments consisted of three limited partnerships and one real estate investment trust. It was alleged that these investments were unsuitable for her and in direct contradiction with her investment objectives.

Respondent Financial denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Respondent Walker (then known as Linda Mewes) was employed by it from February 11, 1988 to June, 1991. **Respondent Financial** also stated that Respondent Walker had numerous meetings and conversations with the Claimant during the time that the Claimant was exploring various investment opportunities. During the course of these meetings and conversations, Ms. Walker assembled substantial information concerning the Claimant's financial condition, investment needs and goals and evaluated those criteria in making recommendations for investment. It was further stated that the Claimant reviewed the recommendations and decided to make the purchases complained of in this matter.

Respondent Premier denied the allegations set forth against it in the Statement of Claim and stated that the Claimant was not a client of the firm at the time the purchases were made.

Respondent Walker denied the allegations set forth in the Statement of Claim and stated that the Claimant would like the panel to focus on just a few of the investments in her portfolio. **Respondent Walker** also stated that only 26% of the Claimant's portfolio was invested in limited partnerships. It was also stated that these investments were intended to be held until liquidation and that no market was expected to develop for the investments and that the investments were suitable for the Claimant in light of the entire portfolio.

RELIEF REQUESTED

Claimant requested an award as follows:

1. Rescission of the investments in NTS Mortgage Income Fund, CNL Income Fund VIII, Ltd., IEA Income Fund X, and Northland Cable Properties Eight Limited Partnership, with the Claimant tendering to the Respondents her interests in those investments.
2. Restitution with respect to the unjust enrichment received by Respondents as a result of their wrongful conduct.
3. Damages from all Respondents, jointly and severally, for the wrongs complained of, together with interest.
4. Punitive damages.
5. Prejudgment interest at the statutory rate from approximately October 1, 1990.
6. Costs and disbursements incurred in bringing this action, including reasonable attorneys' fees. and
7. Such other and further relief as is just and proper.

Respondent Financial requested that the claims asserted against it be dismissed with prejudice and that it be awarded its' costs and attorneys' fees.

Respondent Premier requested that the panel enter an award in its favor and against Janet Folsom awarding her nothing on her claims and awarding her nothing on her claims and awarding to Premier its costs and expenses in defending this proceeding, or such relief as the panel believes is appropriate. Further, that Premier should be awarded its reasonable attorneys' fees in having to defend these claims.

Respondent Walker requested that the panel enter an award in her favor and against Janet Folsom awarding her nothing on her claims and awarding to her costs and expenses in defending this proceeding, or such other relief as the panel believes is appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. 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 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 Financial Network Investment Corp. and Linda Walker shall be and hereby are jointly and severally liable for and shall pay to the Claimant Janet Folsom the sum of **Thirty five thousand dollars (\$35,000)**.
2. The claims asserted against Premier Planning Associates, Inc. shall be and hereby are dismissed.
3. 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 \$750 per hearing session and \$300 for each prehearing conference, if any. There were nine (9) sessions x \$750 = \$6,250 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 \$200 and shall **refund** the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant Janet Folsom. Respondents Financial Network Investment Corp. and Linda Walker shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$6,250 as forum fees. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ Robert C. Roth, Jr.

Robert C. Roth, Jr., Esq.

Public Arbitrator, Presiding Chair

March 7, 1995

/s/ Robert L. Druva

Robert L. Druva

Public Arbitrator

March 6, 1995

/s/ Norbert J. Sanford

Norbert J. Sanford

Industry Arbitrator

March 6, 1995