

**NATIONAL ASSOCIATION OF SECURITIES DEALERS  
AWARD**

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In the Matter of the Arbitration Between

DAVID F. MOSER, BEATRICE MOSER,  
EARL HEITZMAN, ETHEL HEITZMAN,  
CATHY KIMBALL and THOMAS KIMBALL,

Claimants,

v.

94-00028  
NASD No. 94-28

SECURITIES WEST, INC., PHILLIP ANTON,  
JOSEPH ANTON, LAWRENCE DUCHENE and  
FRANK DETTENREIDER,

Respondents.

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***Representation***

For Claimants: Richard Sacks of Investors Recovery Service, Novato, California and James Sullivan, Esq., San Francisco, California

For Respondent Frank Dettenreider (Dettenreider): L. Louis Raring of Raring and Lipoff, Costa Mesa, California

For Respondents Securities West, Inc., (SWT) Phillip Anton, (P. Anton) Joseph Anton (J. Anton) and Lawrence Duchene (Duchene): David Banerjee, of RND Resources, Inc., Encino, California

***Case Information***

Statement of Claim filed: December 28, 1993

Claimants' Submission Agreement signed: David Moser - December 8, 1993,  
Earl Heitzman - November 1, 1993, Ethel Heitzman - November 1, 1993, Thomas Kimball  
and Cathy  
Kimball - November 8, 1993.

Statement of Answer filed on: Dettenreider - April 20, 1994,  
Statement of Answer of all other Respondents - April 22, 1994

Respondents' Submission Agreement signed on: SWI - April 21, 1994, J. Anton - April 21, 1994, P. Anton - April 21, 1994, Duchene - April 22, 1994, Dettenreider - April 26, 1994

### ***Hearing Information***

Prehearing Conference Date(s)/Sessions: None

Hearing Date/Sessions: October 18/two, 19/two, 20/two, 1994, June 14/two, 15/two, 16/one, 1995

Hearing Location: San Francisco, California

### ***Case Summary***

Claimant alleged breach of fiduciary duty, negligence and misrepresentation in the purchase of Commonwealth Equity Trust (CET) and Commonwealth Equity Trust U.S.A. (CET U.S.A.). David Moser, retired, age 71, had five years prior experience investing in securities. Earl Heitzman and Ethel Heitzman invested virtually their entire net worth in CET and had no prior investment experience. Thomas Kimball and Cathy Kimball were also first time investors.

David Moser's investment objectives were income, safety and growth. Earl and Ethel Heitzman told Respondent Dettenreider that the investment in CET constituted all their money. Dettenreider represented to Moser that CET was extremely safe, the perfect retirement investment and worth far more than the prevailing price per share.

Respondent Dettenreider denied each and every allegation of wrongdoing contained in the Statement of Claim and alleged the offering documents, which Claimants did not deny they received, contained clear and explicit descriptions of the risks of the investment. Claimants were fully competent and capable of understanding their investments in CET. CET was a Real Estate Investment Trust (REIT) consisting of a series of diversified real estate based partnerships. CET's primary objectives were to provide current income, potential appreciation and value, as well as to preserve and protect the shareholders' original invested capital. Claimants' objectives were met by the investment in CET because they wanted both income and the potential for appreciation.

Respondents P. Anton, J. Anton, Duchene and SWI denied all allegations of wrongdoing in the Statement of Claim and alleged CET's decline was a result of the economic climate in the United States and California in particular. CET was a legitimate, ongoing business, which was impacted by adverse economic conditions. Claimant David Moser introduced the other Claimants to Dettenreider. Moser was an experienced investor who had considerable assets. No previous complaint was ever made about CET prior to the

filing of the Statement of Claim.

All aspects of the investments were explained in the prospectuses and annual reports provided to the claimants. CET has been regarded for several years as one of the most conservative real estate investments, and satisfied Claimants' investment objectives.

### ***Relief Requested***

Claimant requested:

1. Compensatory damages of \$328,000;
2. Interest; and
3. Costs.

### ***Other Issues Considered and 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.

Respondent Dettenreider submitted a bankruptcy filing on June 14, 1995 and the panel stayed the arbitration as to him.

Claimant Beatrice Moser died prior to the arbitration hearing. The panel asked for and received argument on the Ms. Moser's successor in interest of her estate pursuing the claim on her behalf. The panel determined that Beatrice Moser's claim could be pursued by her successor in interest on behalf of the estate of Beatrice Moser.

### ***Award***

After considering the pleading, 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. All claims against Respondents P. Anton, J. Anton and L. Duchene are dismissed;
2. Upon receipt to Securities West, Inc. of the shares held by Claimants of Commonwealth Equity Trust, and the successor company, Respondent Securities West, Inc. is liable and shall pay Claimants as follows:
  - a. Earl Heitzman and Ethel Heitzman the total sum of \$38,000;
  - b. Cathy Kimball and Thomas Kimball the total sum of \$21,000;
  - c. David Moser the total sum of \$140,000.

d. The Estate of Beatrice Moser the total sum of \$40,000.

3. All other claims are dismissed;
4. The parties shall each bear their respective attorney's fees;
5. The parties shall each bear their respective costs.

***Other Costs***

None.

***Forum Fees***

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall retain the \$750 hearing session deposit previously paid by the claimant. Forum fees are assessed against Claimants jointly and severally for \$4,125, of which \$750 has been paid and Respondent SWI for \$4,125, calculated as follows:

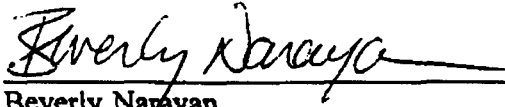
Total fees assessed (11 hearing sessions at \$750/session)	\$	8,250
Claimants' assessment		4,125
Claimants' balance due		3,375
Respondent SWI's assessment		4,125

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

***Arbitration Panel***

<b><i>Name</i></b>	<b><i>Public/Industry</i></b>
Beverly Narayan	Public
Omar Brubaker	Industry
Amy Seltzer	Public

***Concurring Arbitrators' Signatures***



Beverly Narayan

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Omar Brubaker

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Amy Seltzer

***Date of Decision:*** *July 4, 1995*

**Date Served:** 07/06/95