

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joan Ten Hoor & James Dobson

94-00030

Name of Respondent

Ellen Schowalter

REPRESENTATION

Claimants, Joan Ten Hoor and James Dobson were represented by Bonnie L. Macfarlane, Esq., Island Lake, Illinois.

Respondent, Ellen Schowalter was represented by Daniel L. Schwartz, Esq. of Day, Berry & Howard, Hartford, Connecticut.

CASE INFORMATION

Statement of Claim filed on: January 3, 1994. Claimants, Joan Ten Hoor and James Dobson filed a joint Uniform Submission Agreement which was signed on December 30, 1993.

Statement of Answer filed by Respondent, Ellen Schowalter on: March 28, 1994. Respondent, Ellen Schowalter's Submission Agreement was signed on: March 23, 1994.

HEARING INFORMATION

Hearing Date/Sessions: January 17, 1995 for One (1) session, held telephonically.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, Joan Ten Hoor and James Dobson alleged that Respondent Ellen Schowalter ("Schowalter") recommended and made several unsuitable purchases for the Claimants' accounts. Claimant stated that the transactions occurred between November 30, 1989 and April 2, 1991.

Specifically, Claimants alleged that Claimants, being unsophisticated investors, conducted all their investing through Schowalter. Claimants informed Schowalter that their investment objectives were preservation of capital for retirement and long-term growth. Claimants relied on Schowalter's recommendations that the mutual funds and limited partnerships would meet their investment objectives. However, the purchases recommended by Schowalter were speculative, somewhat illiquid, and of higher risk. As a result of this injurious conduct the Claimants suffered a \$69,000.00 loss. Based on these allegations, Claimants asserted the following claims: violation of the Revised Illinois Statute, Chapter 121 1/2, Section 137.1 et seq.; common law misrepresentation; violation of the Illinois Consumer Fraud and Deceptive Practices Act; breach of contract; violation of the Securities Exchange Act of 1934 and Rule 10(b)(5); unsuitable recommendations; and violation of Connecticut Securities Laws.

Respondent Schowalter denied the material allegations contained in the Statement of Claim. Respondent asserted that the transactions occurred on or prior to May 21, 1990 and that the sole transaction occurring after May 21, 1990 was identical to the one occurring on that date and was therefore based on the same investment objectives. Moreover, Schowalter asserted several affirmative defenses, including the following:

1. All of the claims are barred by the statute of limitations, and the doctrines of laches and waiver;
2. All claims are barred, in whole or in part, by Claimants' own negligence;
3. Claimants knew of, and assumed the risk involved; and
4. Claimants ratified all transactions.

RELIEF REQUESTED

Claimants, Joan Ten Hoor and James Dobson requested an entry of an award against Respondent Ellen Schowalter for a rescission of the sales of the securities sold to the Claimants, or in the alternative, the sum of \$69,000.00; plus interest in the amount of 10% from the date of sale; attorneys' fees; and other such relief the panel deems equitable.

Respondent, Ellen Schowalter requested that the Statement of Claim be dismissed in its entirety.

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.

The Arbitration Panel specifically finds that:

1. Respondent, Ellen Schowalter's Request to Reconsider the Location of the Situs is denied;

2. Respondent, Ellen Schowalter's Motion To Dismiss the Statement of Claim pursuant to the statute of limitations is granted. The Statement of Claim is dismissed with prejudice; and

3. Claimants, Joan Ten Hoor and James Dobson's Motion to Amend the Statement of Claim is denied.

AWARD

After considering the pleadings, the motion and the argument of counsel at the telephonic hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee is assessed: One (1) hearing session x \$500.00 = \$500.00

The National Association of Securities Dealers, Inc. ("NASD") shall retain the \$150.00 filing fee and the \$500.00 hearing session deposit previously paid to the NASD by the Claimants, Joan Ten Hoor and James Dobson.

Concurring Arbitrators' Signatures
Name

Date

August 30, 1995

August 31, 1995

August 30, 1995
