

**SIMPLIFIED AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

CASE: 94-00201

Priscilla F. Seminara v. Ray Pastor, Hibbard Brown and Company, Inc., FSC Securities Corp., Commonwealth Equity Services, Inc., and Allen J. Schwalb.

ATTORNEYS:

For Claimant: Brian J. Sheen, Delray Beach, Florida.

Respondent Ray Pastor ("Pastor") appeared pro se.

For Respondent FSC Securities Corp. ("FSC"): James M. Kaplan of Wilson Elser Moskowitz Edelman & Dicker, Miami, Florida.

For Respondent Hibbard Brown and Company, Inc. ("Hibbard Brown"): Steven Caruso, Esq. of Hibbard Brown & Company, Inc., New York, New York.

For Respondent Commonwealth Equity Services, Inc. ("Commonwealth"): Jeffrey A. Cohen, Esq. of Stephens Lynn Klein & McNicholas, West Palm Beach, Florida.

For Respondent Allen J. Schwalb ("Schwalb"): Christine Chambers Goodman, Esq. of Gipson Hoffman & Pancione, Los Angeles, California.

DATE FILED: January 18, 1994.

CASE SUMMARY: Claimant alleged that she was a 57 year old single divorcee with very moderate financial means and experience when she met Respondent Pastor; that Pastor made representations to her that he was a Certified Financial Planner so she trusted him; that Pastor, while at Hibbard Brown, FSC, and Commonwealth, placed her funds in the following unsuitable investments: Angeles Hospitality Partners II; Parker and Parsley Oil Developmental Drilling Program; Polaris Aircraft Income Fund II; Prime Plus; VMS Strategic Land Fund II; and, Star Partners II. Claimant alleged that those investments were unsuitable in light of her stated financial objective of safety, lack of investment experience, risk tolerance and lack of financial wherewithal. Claimant further alleged that Respondent Schwalb, the general partner of Star Partners II, is also responsible for her losses in that investment.

Respondent Pastor denied the allegations of wrongdoing contained in the Statement of Claim and maintained that all of the investments purchased by Claimant through him were suitable based upon her net worth at the time of purchase and there were no misrepresentations of material facts. Respondent Pastor further alleged that any investments made by Claimant prior to March 18, 1988 would have to be excluded because they are clearly outside the eligibility period pursuant to Rule 10304 (formerly Section 15) of the Code of Arbitration Procedure ("Code").

Respondent FSC maintained that the investments at issue were purchased more than six years prior to the filing of the arbitration and, therefore, all claims against it should be dismissed.

Respondents Commonwealth and Schwalb each denied the allegations of wrongdoing contained in the Statement of Claim and maintained that the securities purchased for the Claimant were suitable.

CLAIM DATA:

Claim: \$95,000.00
Interest: Yes
Punitive: \$200,000.00
Atty. Fees: Yes
Filing Fee: No
Costs: Yes

AWARD DATA:

Award: \$20,000.00
Interest: Pre-Judgment Int. Included in Awarded Amount
Punitive: \$.00
Atty. Fees: \$.00
Filing Fee: \$750.00
Costs: \$.00


AWARD: The undersigned arbitrators have decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent Pastor is found liable and shall pay to the Claimant the sum of \$20,000.00 inclusive of pre-judgment interest plus post-judgment interest at the legal rate from the date of the Award to the date of payment of the Award. 2) All other requests for relief are denied. 3) NASD Regulation, Inc. shall retain the \$200.00 claim filing fee previously deposited by Claimant. NASD Regulation, Inc. shall retain \$300.00 of the \$750.00 hearing session deposit previously deposited by Claimant and Respondent Pastor shall pay to Claimant \$300.00 as reimbursement of said fee.

OTHER ISSUES: Due to the bankruptcy filing of Respondent Hibbard Brown, all proceedings against this entity were stayed. Therefore, the arbitration panel made no determinations regarding Respondent Hibbard Brown. By letter dated December 15, 1994 the Claimant advised NASD Regulation Inc. that a settlement agreement had been reached between Claimant and Respondents Schwalb and Commonwealth. By letter dated December 17, 1996 the Claimant advised NASD Regulation, Inc. that she voluntarily dismissed, with prejudice, Respondent FSC from this proceeding.

A formal hearing was scheduled to be conducted in this case on September 24, 1997. On September 22, 1997 NASD Regulation, Inc. received a request from the Claimant, via facsimile, that the arbitrators render an Award based upon the documentary submissions previously provided by the parties, without a formal hearing. On September 24, 1997 NASD Regulation, Inc. was advised, via telephone, by Maria Battaglia, who represented herself to be Pastor's fiancée, that Pastor was in the hospital suffering from a terminal illness, unable to walk or talk, and, therefore, would not be able to attend the hearing. The arbitrators were provided with the foregoing information and determined to render an Award without a formal hearing.

ARBITRATION PANEL:


Stan West
Public/Chairperson


Norman L. Weiss
(Public Panelist)


Douglas Delaney, Jr.
(Industry/Panelist)

Date of Decision: November 6, 1997