

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Karen E. Linnen, individually
and as administratrix of the
Estate of Hilda R. Maier

94-00585

Name of Respondents

First Affiliated Securities
William P. Carroll
PFG Securities, Inc.
Spelman & Co., Inc.

REPRESENTATION

For Claimant Karen Linnen, individually and as administratrix of the Estate of Hilda Maier appeared Deidre S. Venables, Esq., a sole practitioner located in Southampton, New York.

Respondents First Affiliated Securities, Inc. ("First Affiliated"), PFG Securities, Inc. ("PFG") and William Carroll ("Carroll") did not appear at the hearing.

Respondent Spelman & Co. ("Spelman") settled the dispute with Claimant prior to the hearing. Therefore, no representative appeared for Spelman.

CASE INFORMATION

Statement of Claim filed on: February 8, 1994.

Claimant's Submission Agreement signed on: January 28, 1994.

Statement of Answer filed by Respondent First Affiliated on: August 29, 1994.

Respondent First Affiliated's Submission Agreement signed on: August 23, 1994.

Respondent Carroll, PFG and Spelman did not file a Statement of Answer nor execute Submission Agreements.

HEARING INFORMATION

Hearing Dates/Sessions:

May 15, 1995

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One Session

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York City, New York.

CASE SUMMARY

Claimant alleged, upon information and belief, that Carroll was employed by PFG from August 1987 through August 1989, at which time PFG merged with First Affiliated. Claimant further alleged that Carroll remained at First Affiliated through November 1989, at which time he left and joined Spelman. Claimant asserted that she and her mother, Hilda Maier ("Maier"), opened a joint account, on or about July 1985, with PaineWebber and that, in December 1985, Carroll was assigned as the account representative. Claimant further asserted that, at that time, the account had a value of approximately \$225,000.00 which represented the accumulated life savings and inheritance that Maier would rely on for her living expenses.

Claimant alleged that, in December 1985, upon Carroll's recommendation, she and Maier invested \$224,993.44 in Criterion Funds, U.S. Government High Yield Trust. In addition, Claimant alleged that, in September 1987, she and Maier followed Respondent Carroll's recommendation, and liquidated \$25,000.00 of the U.S. Government High Yield Trust and invested this sum in Criterion Global Growth Fund. Claimant further alleged that, during the period of May 1988 through May 1990, Respondent Carroll induced her and her mother to liquidate their investments in the Criterion funds and purchase \$274,000.00 in 5 limited partnerships based on representations that the purchases were readily liquid, that the principal value of the partnerships was secure, and that the purchases were safe, suitable investments.

Claimant alleged that Carroll's representations were false and fraudulent, that Carroll actively concealed the fraudulent conduct by misstating the rates of return on the limited partnerships, and that the investments were unsuitable. Claimant further alleged that Respondents PFG, First Affiliated and Spelman failed to properly supervise Carroll's activities and that they breached the fiduciary duty and the duty of good faith and fair dealing owed to her and Maier. Claimant also alleged that the conduct, acts, practices and wrongs complained of were reckless, wanton and willful and that, therefore, Claimant was entitled to attorney's fees.

Respondent First Affiliated, which acquired Respondent PFG on or about May 31, 1989, denied generally and specifically each and every allegation contained in the Statement of Claim. As affirmative defenses, First Affiliated maintained that the Statement of Claim failed to set forth any facts sufficient to constitute a cause of action; that the Claimant's damages, if any, were caused by third parties; that any damages suffered by Claimant were the result of action or inaction on the part of Claimant, including Claimant's failure to review prospectuses, subscription applications and agreements, and other relevant documents; that the Claimant submitted false and misleading information to Respondent regarding the suitability of Claimant to purchase the securities at issue; and that most of the investments were made through other brokers/dealers.

First Affiliated further asserted that it maintained an adequate and reasonable system of supervision at all times Claimant had an account; that, in accordance with Section 20(a) of the Securities Exchange Act of 1934, it made a good faith effort, as a controlling person, to prevent any alleged fraudulent act on the part of any of its employees, and it did not directly or indirectly induce any conduct which could constitute a cause of action; that Claimant received confirmation slips and monthly statements and was provided documentation with regard to the investments made and, therefore, Claimant should be estopped from making the claims set forth; that the losses were proximately caused by Claimant's own conduct or negligence; that Claimant failed to mitigate her damages; that the claim is barred by the principle of laches and the applicable statute of limitations.

RELIEF REQUESTED

Claimant requested the sum of \$274,000.00, interest, attorneys fees, costs and disbursements and such other and further relief as the panel deems just, proper and equitable.

First Affiliated requested that the Statement of Claim be dismissed in its entirety. First Affiliated further requested costs and such other and further relief as the panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

By letter date June 16, 1994, the NASD was advised that Claimant and Respondent Spelman entered into a settlement agreement and, therefore, all claims against Respondent Spelman were withdrawn.

The arbitration panel made the following rulings concerning Respondents Carroll and PFG, who did not file a Statement of Answer and a Submission Agreement and who failed to appear at the hearing conducted in this matter:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Carroll and PFG.
2. The panel found that Carroll was a person associated with a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Carroll pursuant to Section 12(a) of the Code. Additionally, Carroll executed a Form U-4 requiring him to arbitrate at this forum upon demand of the customer.
3. The panel found that PFG was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over PFG pursuant to Section 12(a) of the Code.
4. In view of 2 and 3 above, Carroll and PFG were each required to file with the NASD an executed Submission Agreement and Statement of Answer pursuant

to Section 25(b) of the Code. In this regard, the panel found that the NASD properly served the Statement of Claim upon Carroll and PFG pursuant to Sections 25(a) and (c) of the Code.

5. The panel found that the NASD, pursuant to Sections 21, 26 and 29 of the Code, provided Carroll and PFG with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with the hearing without Carroll and PFG whose absence was unexcused.

The arbitration panel made the following rulings with respect to Respondent First Affiliated, who submitted a Statement of Answer and Submission Agreement but did not appear at the hearing conducted in this matter:

1. Pursuant to Section 1 of the Code the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Respondent First Affiliated.
2. The panel found that First Affiliated was member of the NASD at the time the controversy arose. Consequently the panel found personal jurisdiction over First Affiliated pursuant to Section 12(a) of the Code.
3. The panel found that the NASD, pursuant to Sections 21, 26, and 29 of the Code, provided First Affiliated with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with these hearings without First Affiliated whose absence was unexcused.

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.

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 Carroll, First Affiliated and PFG be and hereby are jointly and severally liable and shall pay to the Claimant the sum of \$102,906.00.
2. Respondents Carroll, First Affiliated and PFG be and hereby are jointly and severally liable and shall pay to the Claimant the sum of \$1,253.99 representing Claimant's costs.
3. Claimant's request for attorney's fees is hereby denied.
4. All other claims are hereby denied.

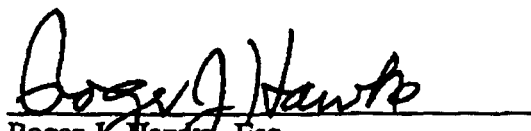
FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain \$200.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

$$1 \text{ session} \times \$750.00 = \$750.00$$

Claimant be and hereby is liable for the sum of \$750.00, representing the total amount of forum fees assessed. Claimant previously deposited \$750.00 with the NASD. Therefore, nothing is owed to the NASD by the Claimant.

ARBITRATORS' SIGNATURES

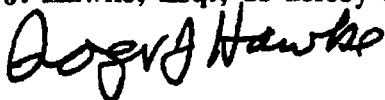


Roger J. Hawke, Esq.
Public Chairperson

Edward T. Hill
Public Arbitrator

Robert L. Spangler
Industry Arbitrator

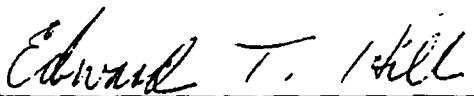
I, Roger J. Hawke, Esq., do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: September 1, 1995

ARBITRATORS' SIGNATURES

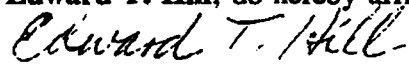
Roger J. Hawke, Esq.
Public Chairperson



Edward T. Hill
Public Arbitrator

Robert L. Spangler
Industry Arbitrator

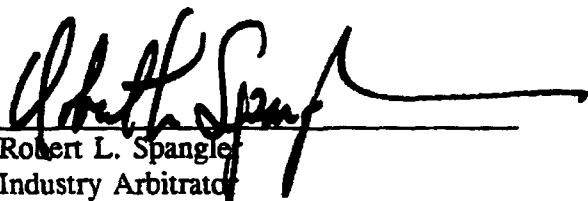
I, Edward T. Hill, do hereby affirm that this is my decision in the above-captioned matter.


Date of Decision: September 1, 1995

ARBITRATORS' SIGNATURES

Roger J. Hawke, Esq.
Public Chairperson

Edward T. Hill
Public Arbitrator



Robert L. Spangler
Industry Arbitrator

I, Robert L. Spangler, do hereby affirm that this is my decision in the above-captioned matter.

Date of Decision: September 1, 1995

