

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Maryrose and Carl Mulert

94-00919

Name of Respondents

Marvin R. Burt  
Burt & Associates, Inc.

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REPRESENTATION

Claimant Maryrose and Carl Mulert ("Claimants") were represented by Russell L. Forkey, Esq., Ft. Lauderdale, FL.

Respondents Marvin R. Burt ("Burt") and Burt Associates, Inc. ("BA") were represented by Harold I. Freilich, Esq., Richard H. Saltsman, Esq., and Jane M. Lyons, Esq., Verner, Liipfert, Bernhard McPherson & Hand, Washington, D.C.

CASE INFORMATION

The Statement of Claim was filed March 10, 1994.

The Amended Statement of Claim was filed November 25, 1994.

Claimant Maryrose Mulert's Uniform Submission Agreement was filed March 4, 1994.

Claimants' Revised Uniform Submission Agreement was signed November 16, 1994.

The Joint Statement of Answer of Respondents Burt and BA (collectively "Respondents") was filed October 28, 1994.

Respondents' Uniform Submission Agreements were signed October 27, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:      July 22, 1997/two sessions  
   July 23, 1997/two sessions

Hearing Location:              Birch, Horton Bittner and Scherot  
   Washington, D.C.

CASE SUMMARY

Claimant Maryrose Mulert filed a statement of claim which alleged that she had become acquainted with Respondent Marvin Burt through attending the same church. Claimants alleged that Respondents were eventually retained by Claimants, and performed financial planning and money management activities for them, and made recommendations concerning the purchase of certain securities. Claimant Maryrose

Mulert stated that her investment objectives were safety of principal and current income, and Claimants completed an initial questionnaire for Respondents indicating a preference for conservative investments, and a preference against limited partnerships. Claimant Maryrose Mulert alleged that at Respondents' suggestion, she purchased \$100,000.00 of Century XXIII. Claimants asserted that the investment, constituting a large percentage of their liquid assets, was unsuitable and had lost value, and that Respondents violated a fiduciary duty to her, and made fraudulent statements or omissions, in initially recommending the purchase, and in later continuing to advise Claimant Maryrose Mulert that the investment was sound. In the original Statement of Claim, Claimant Mary Rose Mulert demanded damages in the total amount of \$432,460.00 plus attorney fees.

Respondents denied Claimants' allegations of misconduct. Respondents also contended that the purchase of a limited partnership at issue in the case occurred more than six years prior to the filing of Claimants' claims, thereby making the claims ineligible for arbitration. Respondents further maintained that any misrepresentations alleged by Claimants to have occurred during the six years prior to the filing of the arbitration claim occurred after Claimants had terminated their business relationship with Respondents.

#### **RELIEF REQUESTED**

Claimant Maryrose Mulert requested \$432,460.00 in compensatory damages and attorney's fees. At the hearing, Claimant presented several alternate calculations of compensatory damages.

In their Answer to the Statement of Claim, Respondents requested that the Statement of Claim be dismissed, and that all costs and fees be assessed to Claimants.

#### **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.

At the hearing, Respondents filed several motions. The panel considered Respondents' Motion to Preclude All Claims by Carl Mulert and Claimants' Response thereto and granted the Motion, without prejudice to any other rights of Carl Mulert, since an amended claim adding the name of Carl Mulert to that of Maryrose Mulert had never been served on the Respondents as required by the Code of Arbitration Procedure. A Renewed Motion to Dismiss by Respondents based on the timeliness of the claim of Maryrose Mulert was, after Claimant presented her factual evidence, granted by the panel as to the purchase in 1986 of Century XXIII limited partnership units. The panel allowed the case to go forward as to acts and conduct of Respondents alleged to have occurred within the six-year period prior to the filing of the claim.

**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. That the claims of Claimant Maryrose Mulert are denied in their entirety.
2. That the claim for punitive damages is denied.
3. That each party shall bear its own costs and expenses, including attorneys' fees, with the exception of Forum Fees as specified below.
4. That any and all relief not specifically addressed herein is denied.

**OTHER COSTS**

Pursuant to Rule 10333 Respondent Burt & Associates, Inc. is assessed a member surcharge of \$200.00. Respondent Burt & Associates, Inc. is to receive credit for the \$200.00 surcharge deposit previously submitted to the NASD Regulation, leaving no further surcharge due.

**FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions x \$750.00 = \$3,000.00

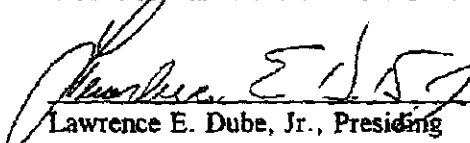
Forum Fees are assessed to Claimants. Claimants are to receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due of \$2,250.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

8/1/97

  
\_\_\_\_\_  
Lawrence E. Dube, Jr., Presiding  
Public Arbitrator

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Harvey A. Levin, Esq.  
Public Arbitrator

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Joseph E. Godridge, Jr.  
Industry Arbitrator

Date Decision Served by NASD Regulation: August 21, 1997

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