

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Nina Berger

and

94-01008

Name of Respondent

Paul K. Johnson

REPRESENTATION OF PARTIES

Nina Berger ("**Claimant**") was represented by Richard L. Bufkin, Esq., Dallas, Texas.

Paul K. Johnson ("**Respondent**") was represented by George W. Fazakerly, Esq., Vial, Hamilton, Koch & Knox, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about March 17, 1995. Submission Agreement of Claimant Nina Berger was signed on March 11, 1994.

Statement of Answer and Counterclaim was filed by Respondent Paul K. Johnson on or about August 8, 1994. Submission Agreement of Respondent Paul K. Johnson was signed on August 8, 1994.

HEARING INFORMATION

The hearing was held on Tuesday, February 28, 1995 in Dallas, Texas for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondent recommended unsuitable securities for her. Specifically, Claimant alleged that Respondent recommended the purchase of four limited partnerships which were not suitable for her in light of her financial situation and experience. Claimant alleged that she informed Respondent that she had no other funds in savings and never understood financial matters and was trusting him to do the right thing. Finally, Claimant stated that when Black Monday hit, she lost two thirds of her investment.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that he recommended that the Claimant invest in five companies in three different industries; that at the time these investments were made, real estate limited partnerships had been profitable, the price of oil was increasing and prospects for oil income funds were bright. It was also stated that these investment recommendations were based not on tax advantages but on the prospect of true increases in property value, undergirded by property renovation, increasing occupancy rates, and increasing lease rates.

RELIEF REQUESTED

Claimant requested an award in the amount of \$31,737.

Respondent requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Paul K. Johnson filed a Motion to Dismiss. Upon review of the motion and the response filed on behalf of the Claimant, the undersigned arbitration panel has decided to take the motion under advisement and informed Respondent that he may re-raise the Motion at the conclusion of the Claimant's case in chief. At the conclusion of the Claimant's case in chief, Respondent re-raised the motion. After considering the evidence and testimony, the arbitrators have decided to **deny** the motion.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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:

Respondent Paul K. Johnson shall be and hereby is liable for and shall pay to the Claimant Nina Berger the sum of **Twenty four thousand seven hundred fifty dollars (\$24,750)**. This panel would have also found Anchor National Financial Services, Inc. liable had Anchor National Financial Services, Inc. been a party to this matter.

Each party shall bear its own costs, expenses, and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$400 = \$800 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(a) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") waived the deposit of fees for the Claimant. Respondent Paul K. Johnson shall be and hereby is liable for and shall pay to the NASD the sum of \$920 of which \$800 is forum fees and \$120 is the filing fee. Pursuant to §45 a surcharge is assessed against Anchor National Financial Services, Inc. or its successor firm in the amount of \$200. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ John P. Brooks, Esq.

John P. Brooks, Esq.

Public Arbitrator, Presiding Chair

March 16, 1995

/s/ Harry J. Saginaw, JD

Harry J. Saginaw, JD

Public Arbitrator

April 28, 1995

/s/ Robert C. Denenberg

Robert C. Denenberg

Industry Arbitrator

March 30, 1995