

AWARD

**NASD, Regulation, Inc.,
Office of Dispute Resolution**

In the Matter of the Arbitration Between

Phylliss Moss

Claimant

NASD Regulation, Inc.
No. 94-01062

v.

Joel Dean Moore
Kenneth Robert Winton
California One Investments
Raymond Dillon
Richard Crawford Schaub

Respondents

REPRESENTATION OF PARTIES

Phylliss Moss ("**Claimant**") was represented by Michael R. McCabe, Esq., Reese Smalley Wiseman & Schweitzer, Redding, California.

Joel Dean Moore ("**Moore**") was represented by Peter R. Boutin, Esq., Keesal Young & Logan, San Francisco, California.

Ken Robert Winton ("**Winton**") represented himself pro se.

Richard Crawford Schaub ("**Schaub**") represented himself pro se.

California One Investments ("**Cal. One**") was represented by H. Thomas Fehn, Esq.

Raymond Dillon ("**Dillon**") represented himself pro se.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about March 17, 1994. Claimant's First Amended Statement of Claim was filed on or about August 1, 1995. Claimant's Submission Agreement was signed on March 16, 1994.

Respondent Ken Robert Winton's Statement of Answer was filed on or about August 3, 1994. Respondent did not file a Uniform Submission Agreement.

Respondent Richard Crawford Schaub's Statement of Answer was filed on April 1, 1996. The Submission Agreement for Richard Schaub was signed on March 29, 1996.

Respondent Joel Dean Moore's Statement of Answer was filed on or about June 15, 1994. The Submission Agreement for Joel Dean Moore was signed on June 10, 1994.

The Answer for California One Investments was filed on or about August 2, 1994. The Submission Agreement for California One Investments was signed on July 28, 1994.

HEARING INFORMATION

The hearing was held on October 14 and 15, 1996 in San Francisco California for a total of 4 sessions.

CASE SUMMARY

Claimant alleges that the Respondents breached their fiduciary duty to the Claimant in recommending and ultimately selling the Claimant a speculative high risk limited partnership, know as the IDM Participating Mortgage Income Fund. Claimant further alleges that the Respondents conduct violated Rule 10b-5 of the Securities and Exchange Act of 1934, violated the California Corporations Code Sec. 25401, and violated Secs. 17200 and 17500 of the California Business and Professions Code.

Respondent Schaub denied the allegations set forth in the Statement of Claim. Respondent Schaub specifically argued that the firm and Mr. Dillon acted prudently in the offering of IDM partnerships.

Respondent Winton argued that he did not have supervisory responsibilities for the Redding office of California One Investments. Respondent Winton further argued that any review he conducted on new account forms was strictly administrative ensuring that forms submitted were complete and that any substantive review was done out of the Los Angeles office.

RELIEF REQUESTED

Claimant requested an award in an amount of \$39,615.90 plus 10% per annum from the date of her investment. Additionally, Claimant requested an award of \$50,000 for emotional distress, and a total of \$225,000 in punitive damages. Further, the Claimant requested an award of \$31,275 in attorneys fees, \$2,800 in expert fees, and costs amounting to \$4,349.88.

FINDINGS

1. It is the finding of the panel that the IDM Participating Mortgage Income Fund ("the IDM Partnership) should never have been recommended by Joel Dean Moore ("Moore") to

Claimant, Phylliss Moss. As it was the first limited partnership that Moore had ever sold, there was a failure to supervise properly by acting branch manager, Ken Winton. In addition, due to the prior felonious record of Moore, there should have been and was not additional supervision by the office of supervising jurisdiction and compliance manager, Raymond Dillon.

2. As the customer supervisory responsibilities rested solely with Raymond Dillon, no personal liability attaches to Respondent Richard Schaub for failure to supervise, although the panel would have found against the firm if California One Investments, Inc. still existed.
3. Ken Robert Winton had supervisory responsibilities over Moore at the time of the recommendation and purchase of the IDM Partnership.
4. The matter has been stayed as to Raymond Dillon because of his personal bankruptcy.
5. The matter has been stayed as to California One Investments, Inc. because of the bankruptcy of the corporation.
6. Claimant suffered damages as a proximate result of the purchase of the IDM Partnership in the amount of \$39,646.00 plus interest at 8% from March 20, 1991.
7. Claimant received the sum of \$20,000.00 from Joel Dean Moore in a settlement of the claim against him. Joel Dean Moore was dismissed from this action by the Claimant following the settlement.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Kenneth Robert Winton has been properly served with the Statement of Claim pursuant to §13 and §25 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Kenneth Robert Winton did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted. The record indicates that Mr. Winton was not present at the second day of the hearing, October 15, 1996.

All proceedings are stayed as to California One Investments and Raymond Dillon due to bankruptcy filings.

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 NASD Regulation, Inc., Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant is awarded and Kenneth Robert Winton shall pay to Claimant the sum of \$19,646.00 with interest on said amount at 8% from March 20, 1991 to the hearing date October 14, 1996. The amount awarded reflects the full damages of 39,646.00 less the \$20,000.00 offset for recovery already made.
2. All claims are denied and dismissed as to Richard Schaub.
3. All claims for attorney fees are denied and dismissed.
4. All claims for punitive damages are denied and dismissed.
5. All claims for violation for violations of California Welfare and Institution Code Section 15610 et seq. are denied and dismissed.
6. All claims for fraud are denied and dismissed.
7. All claims for violations of California Corporations Code section 25401 are denied and dismissed.
8. All claims for breach of fiduciary duty, aiding and abetting, and breach of fiduciary duty are denied and dismissed.
9. All claims for negligence, gross negligence and constructive fraud are denied and dismissed.
10. All claims for breach of covenant of good faith and fair dealing are denied and dismissed.
11. All claims for and/or fraudulent business practices are denied and dismissed.
12. All claims for emotional distress are denied and dismissed.

13. Each party shall bear their own costs.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were 4 sessions x \$750 = \$3,000.00 in forum fees. Pursuant to §43(b) of the NASD Regulation, Inc., Office of Dispute Resolution Code of Arbitration Procedure (the "Code"), 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(c) of the Code of Arbitration Procedure, all forum fees are assessed against Richard Schaub.

Total Fees	
4 Hearing Sessions @ \$750.00 =	\$3,000.00
Total	<u>\$3,000.00</u>

Pursuant to §43(c) of the Code, NASD Regulation, Inc. shall **retain** the non-refundable filing fee in the amount of \$200 and shall **refund** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. by the Claimant Phylliss Moss.

Fees are payable to the NASD, Regulation, Inc.

Dated:

Helen B. Culiner
Helen B. Culiner
Public Arbitrator, Presiding Chair

2/17/97

Leba G. Wine
Leba G. Wine
Public Arbitrator

Robin Lynn Berry
Robin Lynn Berry
Industry Arbitrator

DATE SERVED: FEBRUARY 18, 1997

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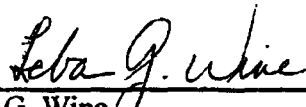
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Public Arbitrator, Presiding Chair


Leba G. Wine
Public Arbitrator

Robin Lynn Berry
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2/13/97

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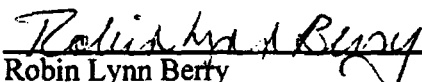
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Dated:

Helen B. Culiner
Public Arbitrator, Presiding Chair

Leba G. Wine
Public Arbitrator


Robin Lynn Berly
Industry Arbitrator

2/14/97

DATE SERVED: FEBRUARY 18, 1997