

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Helen Hann

Claimant,

v.

No. 94-01145

Dreher & Associates, and
Randy DePoister,

Respondents.

REPRESENTATION OF PARTIES

For Claimant: Helen Hann ("Hann") was represented by Aron D. Robinson, Esquire, of Holstein Mack & Klein, located in Chicago, Illinois.

For Respondents: Dreher & Associates ("Dreher") was represented by Thomas P. Ward, Esquire, of McBride Baker & Coles, located in Chicago, Illinois. Randy DePoister ("DePoister") did not appear at the hearing.

CASE INFORMATION

Claimant's Statement of Claim was filed on: March 25, 1994.

Claimant's Submission Agreement was signed on: March 16, 1994.

Respondent Dreher's Statement of Answer was filed on: July 13, 1994.

Respondent Dreher's Submission Agreement was signed by its President on: July 8, 1994.

Respondent DePoister did not submit a Statement of Answer or a properly executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference: None held.

Hearing Date/Sessions: October 16, 1996, for Two (2) sessions; and
October 17, 1996, for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Hann alleged that Respondent DePoister, while employed by or acting as an agent for Respondent Dreher, made omissions and misrepresentations of material facts in selling investments and securities to her from 1985 through 1990. According to Claimant, these investments and securities consisted of interests in real estate limited partnerships in the amount of \$125,000 and two promissory notes from a fictional company called Jarco, Inc. in the amount of \$60,000 with interest at the rate of 25% per annum. Claimant specifically alleged that:

1. Respondents were in a fiduciary relationship to her;
2. Respondents took advantage of her elder age and unsophisticated investment experience; and
3. Respondents stated that she would double her money from the limited partnership investments in five to seven years and from the promissory notes in thirty to sixty days, that these investments and securities would provide retirement and current income, and that these investments and securities were good, sound, and reliable.

Claimant asserted claims for violation of Section 12(a) of the Securities Act of 1933, since the promissory notes were not registered as required by Section 5 of the Securities Act of 1933; violation of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 of the Securities Exchange Commission due to Respondents' failure to disclose risks, and making unsubstantiated opinions and predictions; violation of Section 15(1) of the Securities Exchange Act of 1934 due to Respondents' sale of promissory notes by means of manipulation, deception, and fraudulent devices; fiduciary fraud pursuant to Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS, Sec. 505/2 for making false, negligent, and fraudulent representations; breach of fiduciary duty; and violation of the Illinois Securities Law of 1953 due to Respondents' failure to register the promissory notes in the state of Illinois.

Respondent Dreher denied the allegations set forth in the Statement of Claim. Respondent Dreher stated that Claimant's purchase of Jarco promissory notes was not made through Dreher nor was

Dreher involved in any manner in the purchase of these promissory notes. Furthermore, Respondent Dreher contended that no recovery is supportable under any of Claimant's legal claims.

RELIEF REQUESTED

Claimant Hann requested an award in the amount of \$60,000 in compensatory damages plus interest at the rate of 25% per annum pursuant to the promissory notes, or, in the alternative, prejudgment interest back to the date of the promissory notes.

Respondent Dreher requested that the panel enter no award against it, and that all costs and fees of this action be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by the Claimant, the undersigned arbitrators have determined that respondent DePoister has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that respondent DePoister had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent DePoister did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code and is bound by the determination of the arbitration panel on all issues submitted.

Pursuant to court order, Claimant's limited partnership claims are ineligible for submission to arbitration under § 15 of the Code. Dreher & Associates, Inc. v. Hann, No. 94 C 4092 (N.D. Ill. Feb. 13, 1995).

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 NASD Regulation, Inc. Office of Dispute Resolution.

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. All claims in the Statement of Claim with respect to respondent Dreher & Associates are dismissed with prejudice and denied in their entirety;
2. Respondent Randy DePoister is liable for and shall pay claimant Helen Hann \$60,000 in compensatory damages, plus 25% interest per annum, compounded annually, beginning to accrue May 22, 1990, on \$20,000, and 25% per annum, compounded annually, beginning to accrue July 10, 1990, on \$40,000;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure (the "Code"), the following Forum fees are assessed: Three (3) hearing sessions x \$500 per hearing session = \$1,500.

The NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the claimant Helen Hann.

Pursuant to §10333 of the Code, respondent Dreher & Associates is liable for and shall pay the member surcharge fee in the amount of \$200.

The NASD Regulation, Inc. Office of Dispute Resolution shall **retain** postponement fees in the amount of \$300 previously deposited by the claimant Helen Hann.

Claimant Helen Hann is liable for and shall pay the balance of her postponement fees in the amount of \$200.

Respondent Randy DePoister is liable for and shall pay additional forum fees in the amount of \$1,000. Respondent Randy DePoister is also liable for and shall reimburse claimant Helen Hann for her hearing session deposit in the amount of \$500.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Fay Clayton
Fay Clayton, Esquire
Public Arbitrator, Presiding Chair

December 30, 1996

/s/ Paul H. Thomas
Paul H. Thomas
Public Arbitrator

December 24, 1996

/s/ Marc B. Horin
Marc B. Horin
Industry Arbitrator

December 30, 1996

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Date of Service: 1-2-97