

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Frederick R. Heifner
Geneva C. Heifner

94-01449

Name of Respondent

The Ohio Company

REPRESENTATION

For Claimants Frederick R. Heifner and Geneva C. Heifner ("Claimants") appeared James A. Zitsman, Esq., a sole practitioner located in Columbus, Ohio.

For Respondent The Ohio Company ("Respondent") appeared Dennis J. Concilla, Esq. of the law firm of Carlile Patchen & Murphy located in Columbus, Ohio.

CASE INFORMATION

Statement of Claim filed: April 18, 1994.

Claimants' Submission Agreement signed on: April 14, 1994.

Statement of Answer filed by Respondent: September 19, 1994.

Respondent's Submission Agreement signed on: September 19, 1995.

HEARING INFORMATION

Hearing Dates/Sessions:	September 7, 1995	-	Two Sessions
	September 8, 1995	-	Two Sessions
	September 22, 1995	-	Two Sessions

The hearings were held at the Doubletree Hotel located in Columbus, Ohio.

CASE SUMMARY

Claimants alleged that they opened accounts with Respondent in 1984 and that Robert Koeller

was their account representative. Claimants further alleged that they were senior citizens and that their investment objectives were income with safety and appreciation with safety.

Claimants alleged that, in November of 1988, Mr. Heifner called Koeller seeking to invest in municipal bonds and that Koeller said he would call when he had some available. Claimants further alleged that, on November 28, 1988, Koeller contacted Mr. Heifner and said he was offering an industrial revenue bond that would pay 10% and that Brunner was the agent to take care of the payments of the interest on the bonds. Claimants alleged Mr. Heifner and Mrs. Heifner each purchased 25 of the bonds. Claimants further alleged that, in July, 1989, Mrs. Heifner invested an additional \$25,000 in Brunner.

Claimants alleged that neither Respondent nor Koeller explained to them that the investments in Brunner Companies Income Properties Limited Partnerships were not bonds, but were limited partnerships. Claimants further alleged that neither Respondent nor Koeller explained that all of their invested funds were at risk, that the income from the investment was only tax free under very limited circumstances, that the investment was not liquid and that the investment was actually directed by Brunner. Claimants also alleged that they were not provided a prospectus for the investment until more than two years after it was sold to them.

Claimants alleged that Respondent violated the NASAA Statements of Policy and Guidelines regarding Real Estate Programs and the NASD Rules of Fair Practice. Claimants also alleged that Respondent engaged in activities that were specifically prohibited by Ohio Revised Code 1707.44(B)(4) and 1707.44(E) and engaged in conduct deemed by the Ohio Administrative Code as deceptive practices. Claimants further alleged that Respondent violated NYSE Rule 405 and NASD Rules of Fair Practice, Art III §27(a), that Respondent breached the fiduciary duty owed to them, that Respondent engaged in fraud as defined by Ohio Revised Code §1707.01 (J), that Respondent engaged in continuing fraud and misrepresentation of the value of the limited partnerships units on the statements mailed to them and that Respondent violated Art III, Section 2 and Section 18 of the NASD Rules of Fair Practice.

Respondent maintained that Claimants had a net worth of in excess of \$1,000,000.00 at the time the Brunner purchases took place. Respondent further maintained that Koeller did not represent Brunner as an industrial revenue bond, but instead properly identified it as a limited partnership in real estate. Respondent also maintained that Mr. Heifner and Koeller discussed some of the specific property involved in Bellefontaine, Ohio since Mr. Heifner was familiar with real estate in that area.

Respondent maintained that Mr. Heifner was sent a prospectus by Koeller's secretary and that, when Mrs. Heifner purchased Brunner for her account, she also received a prospectus. Respondent further maintained that Claimants would have received year end tax forms clearly indicating that the Brunner investment was a limited partnership.

Respondent maintained that Brunner was an appropriate investment for Claimants given their net worth and liquid assets. Respondent denied any violations of state law or the rules of the NASD and NASAA in its sale of Brunner and maintained that Claimants' statement of damages was without merit.

As additional defenses, Respondent maintained that Claimants' claims were barred by the statute of limitations, that Respondent relied on Claimants' assertion that they understood the investment, that Claimants ratified the transactions and that the claim was barred by the doctrine of laches.

RELIEF REQUESTED

Claimants requested the following damages:

For Geneva Heifner: compensatory damages in the amount of \$50,000.00 and \$53,208.36, representing the lost return on investment.

For Frederick Heifner: compensatory damages in the amount of \$25,000.00 and \$27,353.38, representing the lost return on investment.

Claimants also requested consequential damages, representing the additional expenses in tax preparation due to the limited partnership K-1s, punitive damages, attorney's fees and fees and costs of the arbitration.

Respondents requested that all charges be dismissed with costs 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.

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 against Respondent be and hereby are dismissed in their entirety.
2. Claimants' request for punitive damages be and hereby is denied.
3. Each party shall bear their respective costs, including attorney's fees.
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 the \$200.00 non-refundable filing fee deposited by Claimant and have assessed the following forum fees:

6 hearing sessions x \$750.00 = \$4500.00

1. Claimant be and hereby are liable for the sum of \$2,250.00, representing one-half of the outstanding forum fees. Claimants previously deposited \$750.00 with the NASD and, therefore, Claimants are liable and shall pay to the NASD the sum of \$1,500.00.
2. Respondent be and hereby is liable and shall pay to the NASD the sum of \$2,250.00, representing one-half of the outstanding forum fees.

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

ARBITRATORS' SIGNATURES


Jerome B. Haddox, Esq.
Public Chairperson

Ahmed Seif Amrany
Public Arbitrator

Louis H. Mirra, Esq.
Industry Arbitrator

Date of decision: December 12, 1995


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Jerome B. Hadlock, Esq.
Public Chairperson


Ahmed Seif Amragy
Public Arbitrator

Louisa H. Miron, Esq.
Industry Arbitrator

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