

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

In the Matter of the Arbitration Between

Name of Claimant(s)

Ann M. Lundberg

94-02140

Name of Respondent(s)

Linsco Financial Group, Inc.
William A. Horrocks

REPRESENTATION

The Claimant's representative at the hearing was Walter Barry.

For Respondent Linsco Financial Group ("Linsco"): David J. Freniere, Esq.

For Respondent William A. Horrocks ("Horrocks"): Jeffrey B. Loeb, Esq. of the law firm of Ardoff and Morse, P.C., Danvers, MA.

CASE INFORMATION

Statement of Claim filed: June 8, 1994.

Response to Statement of Answer of William A. Horrocks received: November 21, 1994.

Claimant's Submission Agreement signed on: August 26, 1994.

Statement of Answer filed by Respondent William A. Horrocks on: October 17, 1994.

Respondent William A. Horrocks' Submission Agreement signed on: November 14, 1994.

Motion for Partial Dismissal and Statement of Answer filed by Respondent Linsco Financial Group, Inc. on: October 17, 1994.

Respondent Linsco Financial Group, Inc.'s Submission Agreement signed on: January 27, 1995.

HEARING INFORMATION

Hearing Date/Session: October 23, 1995 - One Session.

Hearing Location: American Arbitration Association, 133 Federal Street 11th floor, Boston, MA.

CASE SUMMARY

Claimant alleged that in her initial meeting with Mr. Horrocks there was a trust developed and she informed Mr. Horrocks that she wanted an enhanced return on her money and he informed her he would place her funds in investments that would help her and he made a statement "don't worry about anything, I'll take care of it". Claimant next alleged the initial investment was acceptable and the Claimant was unaware of any subsequent investments that were made in her account with the exception of the first investment. Claimant further alleged she asked the Claimant to roll over an annuity and these funds were placed in the Centennial Mortgage Income Fund II ("Centennial"), a real estate limited partnership, and she was informed by Mr. Horrocks that they were being placed in an IRA. Claimant further alleged additional funds she had in a certificate in a bank were used to purchase additional units of Centennial again without the Claimant's knowledge. Claimant next alleged Respondent Horrocks made an additional purchase of 1.5 units in Carlyle Investment Plus Fund L.P. II without consulting her. Claimant then alleged that she could not get her funds out of those investments for a specific period of time which was contrary to what she had informed the Respondents she wanted and the investments have now lost a significant amount of their value. Claimant finally alleged that the Respondent Horrocks misrepresented the investments as annuities when all along they were limited partnerships and misrepresented when she would be able to retrieve her funds.

Respondent Horrocks maintained the Claimant expressed an interest in increasing the rate of her return on her IRA investments and therefore two units in the Centennial Mortgage Income Fund II were purchased and subsequently five additional units were purchased as the Claimant wished to invest in that fund in light of the fact that it was earning 8% interest per annum opposed to the 5.51% that she was earning elsewhere. Respondent Horrocks further maintained from the time of the initial purchase the Claimant received \$1,700.00 in dividends, \$1,500.00 of which was used to purchase 1-1/2 units in the Carlyle Income Plus II Fund. Respondent Horrocks further maintained at no time did he tell the Claimant that she could not withdraw her money for a specific period of time and he only informed her that withdrawals from the annuity might have tax consequences. Respondent Horrocks further maintained that he did not inform the Claimant that the Centennial Mortgage Fund was an "annuity" but rather told her that it was a limited partnership and he believed that the Centennial Mortgage Fund was an appropriate investment for the Claimant as the prospectus indicated that the fund was designed for pensions and IRAs. Respondent William A. Horrocks further maintained Claimant's Centennial investment and the related allegations are ineligible for arbitration under Section 15 of the Code as the initial investment was made in October of 1986 and the second purchase was made in May of 1987.

Respondent Linsco Financial Group, Inc. maintained the Claimant's allegations concerning Centennial are ineligible for arbitration pursuant to Section 15 of the Code and further maintained that at the time Claimant purchased her units in Centennial, which was in October 1986 and May 1987, William A. Horrocks was not registered with Linsco/Private Ledger Corp. and as a result they cannot be held liable for any losses that Claimant allegedly incurred as a result of investing in Centennial. Respondent Linsco Financial Group, Inc. further maintained that it denied each and every allegation of wrongdoing in Claimant's Statement of Claim including, without limitation, that her investment in Carlyle was not suitable and the Claimant only invested \$1,500.00 in Carlyle and it represented a very small fraction of Claimant's overall net worth and it was consistent with her stated investment objectives. Respondent Linsco further maintained Claimant was provided with the proper prospectus and was further informed of the risks relating to investing in real estate.

In response to the Statements of Answer the Claimant reiterated what was in her Statement of Claim and further maintained the Respondent Horrocks did not have her best interests in mind when he purchased additional units in Carlyle without her knowledge. Claimant next maintained when she discovered what the units were worth she decided she should wait 7 years to sell the investment. Claimant again maintained that she was not explained the risks of the investments and would not have invested in a product that ultimately she learned would not give her her money until she turned 75 and 93.

OTHER ISSUES CONSIDERED AND DECIDED

In response to the Respondents' Motion to Dismiss under Section 15 of the Code of Arbitration Procedure the arbitrator ruled that the Respondent Horrocks admitted he did not know his investor, overestimating her assets, and whenever asked about the inappropriate investment he made for her, he assured her "he was taking care of it" and did not. Therefore, the Claimant's reliance on his assurances constituted a fraudulent act which prevented her from pursuing her rights within the six year time period and the Motion to Dismiss pursuant to Section 15 of the Code of Arbitration Procedure is denied.

RELIEF REQUESTED

Claimant requested damages in the sum of \$10,500.00 and at the hearing amended her damages to the sum of \$8,500.00.

Respondent William A. Horrocks requested a dismissal of the Claimant's Statement of Claim.

Respondent Linsco Financial Group, Inc. requested a dismissal of all allegations relating to Claimant's investment in Centennial; a denial of any relief relating to Claimant's investment in Carlyle and such other relief deemed just and reasonable.

AWARD

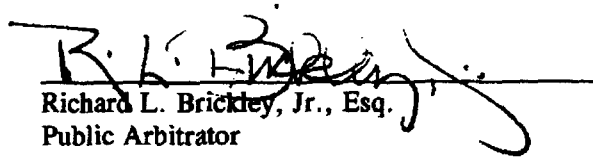
After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Prior to the commencement of the first hearing session the arbitrator was informed that the Claimant had entered into a settlement agreement with the Respondent Linsco Financial Group, Inc.
2. The Respondent William A. Horrocks be and hereby is liable and shall pay to the Claimant the sum of \$5,300.00.
3. The Respondent William A. Horrocks be and hereby is liable and shall reimburse the Claimant the sum of \$275.00 representing the claim filing fee and hearing session deposit previously paid by the Claimant to the NASD.
4. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the claim filing fee and hearing session deposit previously paid by the Claimant to the NASD.

ARBITRATOR SIGNATURE


Richard L. Brickley, Jr., Esq.
Public Arbitrator

Date of Decision: November 10, 1995