

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dolores K. Becker

94-02387

Name of Respondents

Paul R. Konsig
G.M.S. Group, Inc.
Dennis A. Earles

REPRESENTATION

For Claimant: Kenneth G. Turkel, Esq. of the law firm of Williams, Reed, Weinstein, Schifino & Mangione, P.A., Tampa, Florida.

For Respondents: Donald N. Cohen, Esq. in-house counsel at Gruntal & Co. Inc.

CASE INFORMATION

Statement of Claim filed: June 23, 1994.

Claimant's Submission Agreement signed on: June 10, 1994.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on: October 21, 1994

Claimant's Response to Motion to Dismiss and Reply to Affirmative Defenses filed: December 9, 1994

Respondent Paul Konsig's Submission Agreement signed on: October 25, 1994.

Respondent The GMS Group, Inc's Submission Agreement signed on: October 31, 1994.

Respondent Dennis Earles' Submission Agreement signed on: October 20, 1994.

HEARING INFORMATION

Five hearing sessions were conducted in this matter on August 27, 28 and 29 in Tampa, Florida.

CASE SUMMARY

Claimant sought rescission damages against the GMS Group, Inc., its registered representative Dennis Earles, and its branch manager, Paul Konsig, for violation of Florida's Securities Act, Chapter 517, Florida Statutes, breach of fiduciary duty, and negligence. Claimant alleged that all of the claims were based upon Mr. Earles conducting unauthorized trading in Mr. Becker's account and conducting unsuitable trading in the following securities; American Capital Government Securities Fund, Franklin U.S. Government Securities Fund, VMS Mortgage Investment Fund and PLM Equipment Fund III.

Respondents denied all allegations of wrongdoing on their part and denied any liability to Claimant. Respondents denied that any transactions were ever made on behalf of Claimant without her explicit consent and total knowledge of the proposed transaction prior to its execution and each and every transaction was done with the specific authorization of Claimant and with her complete approval. Respondents next maintained that Mr. Earles made recommendations of investments to meet Claimant's requirements, high monthly income with preservation of capital and each investment constituted the highest quality available at the time it was recommended. Respondents next maintained that all transactions and proposed transactions were fully explained to Claimant and all were suitable for the Claimant. Respondents next maintained that any losses allegedly suffered by the Claimant were caused by Claimant's own decisions and market conditions outside of the control of Respondents, and were not caused by any actions of the Respondents.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$274,818.00, interest, costs, attorneys' fees and punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety.

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 original(s) remain on file with the NASD.

The Respondents asserted a Motion to Dismiss Respondent Konsig and maintained that no allegations of wrongdoing were asserted against this individual and that he was named only because of his role as branch manager.

In response, the Claimant maintained that the Statement of Claim contains allegations that Respondent Konsig breached the fiduciary duty owed to Claimant, failed to properly supervise Respondent Earles and failed to fully inform himself relating to the Claimant's investment

objectives.

AWARD

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

1. The Respondents The GMS Group, Inc. and Dennis Earles be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$91,100.00, inclusive of pre-judgement interest.
2. All claims against the Respondent Paul Konsig are dismissed in all respects.
3. The Claimant's request for punitive damages is denied.
4. The Respondents are liable, jointly and severally, and shall pay to the Claimant the sum of \$650.00 representing reimbursement of the hearing session deposit previously paid by the Claimant to the NASD.
5. Attorneys' fees and costs are awarded to Claimant in an amount of and as determined by a court of competent jurisdiction.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$3,750.00 (5 sessions x \$750.00).

1. Respondents are assessed, jointly and severally, the sum of \$3,750.00 for which the NASD shall retain the \$650.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to the NASD of \$3,100.00.
2. Respondent, The GMS Group, Inc., is assessed the sum of \$350.00 representing the member surcharge pursuant to Section 10333 of the Code of Arbitration Procedure.
3. The NASD shall retain the nonrefundable filing fee of \$200.00 previously paid by the Claimant to the NASD.

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

Arbitrators' Concurring Signatures

Name

/s/

Public/Industry

Floyd A. Hillstrom, Esq.

Public

/s/

Clyde E. Renfroe, Jr.

Industry

/s/

Jean M. Lang

Public

Date of Decision: October 21, 1996