

FINAL ORDER

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

James H. Schreiber, Patricia B. Schreiber,
Craig Franzen, Robert C. James,
Robert H. Liebl and Helen J. Liebl,

Claimants,

and

No. 95-00080

H. Beck, Inc.

Respondent.

REPRESENTATION OF PARTIES

Claimants James H. Schreiber, Patricia B. Schreiber, Craig Franzen, Robert C. James, Robert H. Liebl and Helen J. Liebl (collectively referred to as "Claimants") were represented by Bruce Pearson of Fargo, North Dakota.

Respondent H. Beck, Inc. ("Respondent") was represented by Lisa A. Nielsen, Esq. of Greensfelder, Hemker & Gale, P.C. located in St. Louis, Missouri.

CASE INFORMATION

Claimants' Joint Statement of Claim was filed on or about January 6, 1995.

James H. Schreiber and Patricia B. Schreiber's Joint Submission Agreement was signed on June 15, 1994.

Craig Franzen's Submission Agreement was signed on December 22, 1994.

Robert C. James' Submission Agreement was signed on July 6, 1994.

Robert H. Liebl and Helen J. Liebl's Joint Submission Agreement was signed on June 17, 1994.

Respondent's Statement of Answer was filed on or about April 17, 1995.

Respondent H. Beck, Inc.'s Submission Agreement was signed on March 8, 1995 by Gary S. Huroitz, President of H. Beck, Inc.

Respondent's Motion to Dismiss was filed on or about December 6, 1995. Claimants' Response thereto was filed on or about January 22, 1996.

HEARING INFORMATION

A hearing was held on May 14, 1997 for one (1) session in Milwaukee, Wisconsin.

A telephonic hearing on Respondent's Motion to Dismiss was held on June 30, 1997 for one (1) session.

CASE SUMMARY

Claimants brought this action to recover sums invested in North Port Golf Associates L.P.I. ("North Port") that was purchased through Conrad Testuide ("Testuide"). Claimants alleged that they relied on the representations made by Testuide and on the prospectus provided by the underwriter, Respondent H. Beck, Inc. Claimants asserted that according to both Testuide and the prospectus: the principals or general partners of the limited partnership were very successful; the investment was to be in an Arnold Palmer designed and managed golf course; there would be no use of leverage in the investment; and that all funds would be used for the golf course. Claimants contended that the "use of proceeds" portion of the prospectus was so vague that Claimants could not understand it. Claimants alleged that, since the investment was made in 1989, Claimants have received \$0 on their investment. Claimants made the following allegations, including: funds were co-mingled and used with other entities; the general partners had many unsuccessful ventures prior to this partnership; some of the general partners had outstanding judgements against them; Arnold Palmer had not signed a nine year management contract nor had Arnold Palmer been paid for the work he had performed; limited partnership funds were used for the beneficial use of the general partners; the property was never clearly identified as to what would actually be owned; and limited partnership funds were used by the general partners to purchase land on their behalf and then marked up and put into the partnership. Claimants made the following claims, including: (1) securities fraud; (2) misrepresentation; (3) omission of material fact; (4) breach of fiduciary responsibility; and (5) lack of due diligence.

Respondent denied the allegations set forth in the Statement of Claim. Respondent contended that all Claimants represented and warranted that they received, read and understood the Private Placement Memorandum prior to the purchase of their interest in North Port. Respondent denied that it is responsible in any manner, in whole or in part, for any acts or omissions by Testuide. Respondent asserted the following defenses, including: (1) Claimants' theories are barred by the applicable statutes of limitation; (2) Claimants had unclean hands and were barred on fundamental principals of equity from pursuing this claim because this arbitration is the product of an improper solicitation by Claimants' representative, Bruce Pearson; (3) Claimants' claims fail to properly or sufficiently set forth a claim under any of the theories identified; and (4) the NASD should

disqualify Bruce Pearson from proceeding with this arbitration and require him to refund his representation fees to Claimants.

RELIEF REQUESTED

Claimants James H. Schreiber, Patricia B. Schreiber, Craig Franzen, Robert C. James, Robert H. Liebl and Helen J. Liebl requested an award of \$350,000 for principal and interest, \$35,000 for representative fees, and \$950 for filing fees.

Respondent H. Beck, Inc. requested that the claims asserted against it be dismissed in their entirety with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing which took place on May 14, 1997, neither Claimants or Claimants' representative personally attended, but rather, Claimants' representative, Mr. Pearson, attended by telephone without obtaining prior approval from the panel. Prior thereto, Claimants' representative had requested and been granted a postponement of the hearing scheduled to be held on February 25, 1997. At the May 14th hearing, Respondent presented a Motion to Dismiss asserting, in part, that: (1) Claimants have willfully failed to produce documents or information in accordance with Rule 10321(b) of the NASD Code of Arbitration Procedure ("Code"); (2) that Claimants have failed to exchange witness and exhibit lists twenty days prior to the hearing date as required by Rule 10321(c) of the Code; and (3) that Claimants have repeatedly failed to comply with orders issued by the arbitration panel compelling Claimants to produce the documents and information requested by Respondent. After considering the arguments of both parties at the May 14th hearing, the panel decided to reserve its ruling on Respondent's Motion to Dismiss and thereafter issued a new order requiring Claimants to: (1) produce all documents and information requested by Respondent; (2) identify the new representative who was supposedly entering an appearance on Claimants' behalf; and (3) pay the out-of-pocket expenses incurred by Respondent due to Respondent's attendance and preparation for the hearing conducted on May 14, 1997. The panel ordered Claimants to comply with its Order within thirty days of the May 14th hearing. During the June 30, 1997 telephonic hearing before the full panel, Respondents asserted that Claimants had failed to comply with any of the directives of the panel as outlined in the panel's order at the May 14th hearing, and renewed its Motion to Dismiss. The panel's ruling with respect to the Motion to Dismiss is specified below in this Final Order.

FINAL ORDER

After considering the pleadings, motions, all timely responses thereto, as well as the arguments of the parties, the undersigned arbitrators have decided in full and final resolution of all the issues submitted for determination as follows:

- (1) Respondent's Motion to Dismiss is granted and the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) Claimants James H. Schreiber, Patricia B. Schreiber, Craig Franzen, Robert C. James, Robert H. Liebl and Helen J. Liebl are jointly and severally liable for and shall pay to Respondent H. Beck, Inc. its out-of-pocket expenses incurred in attending the May 14, 1997 hearing session in the amount of One Thousand Fifty Nine Dollars and Twenty Cents (\$1,059.20). In deciding to award this sum to Respondent, the panel considered the arguments of the parties, the submissions filed and determined that authority existed for an award of out-of-pocket expenses to the Respondent H. Beck, Inc;
- (3) Claimants' representative Bruce Pearson is ordered to provide a copy of this Final Award to Claimants James H. Schreiber, Patricia B. Schreiber, Craig Franzen, Robert C. James, Robert H. Liebl and Helen J. Liebl; and
- (4) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically enumerated are hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 and one (1) hearing session x \$750 = \$1,050 in total forum fees. Pursuant to § 10332(b) of 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 § 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants James H. Schreiber, Patricia B. Schreiber, Craig Franzen, Robert C. James, Robert H. Liebl and Helen J. Liebl.

Pursuant to § 10333 of the Code, Respondent H. Beck, Inc. is liable for and shall pay the member surcharge in the amount of \$350.


Pursuant to § 10332(c) of the Code, Claimants James H. Schreiber, Patricia B. Schreiber, Craig Franzen, Robert C. James, Robert H. Liebl and Helen J. Liebl are jointly and severally liable for and shall pay all forum fees incurred in this matter which is the sum of \$300 (\$1,050-\$750 hearing session deposit).

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration Number 95-00080
Order Page 5 of 5

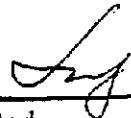
Pursuant to § 10332(c) of the Code, Claimants James H. Schreiber, Patricia B. Schreiber, Craig Franzen, Robert C. James, Robert H. Liebl and Helen J. Liebl are also jointly and severally liable for and shall pay postponement fees in the amount of \$750.

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


Concurring Arbitrators' Signatures



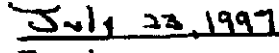
Herbert Neuer, Esq.
Chairperson
Public Arbitrator

 12, 1997

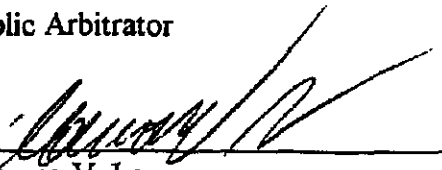
Dated:




Herbert S. Bratt, Esq.
Panelist
Public Arbitrator

 22, 1997

Dated:



Ramona V. Larson
Panelist
Industry Arbitrator

 7/21/97

Dated:

For NASD Regulation use only:
Date Final Order served on the parties: AUGUST 1, 1997