

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Village Building Service, Inc.
Oscar Willingham

95-01657

Name of Respondents

Biltmore Securities, Inc.
Craig Kulman

REPRESENTATION

For claimants Village Building Services, Inc., ("VBS") and Oscar Willingham ("Willingham") appeared William K. Flynn, Esq. of Strauss & Troy located in Cincinnati, Ohio.

For respondents Biltmore Securities, Inc., ("Biltmore") and Craig Kulman ("Kulman") appeared Peri Erlanger, Esq. of Bernstein & Wasserman, LLP located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on March 29, 1995. VBS's Submission Agreement was signed on March 27, 1995. Claimant Willingham's Submission Agreement was signed on March 27, 1995.

Joint Statement of Answer was filed by Biltmore and Kulman on July 10, 1995. Biltmore's Submission Agreement was signed on April 20, 1995. Kulman's Submission Agreement was signed on April 20, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	May 16, 1996	-	1 session
Hearing Dates/Sessions:	July 9, 1996	-	2 sessions
	July 10, 1996	-	2 sessions

The hearings were held at the DoubleTree Guest Suite located in Cincinnati, Ohio.

CASE SUMMARY

Claimant Willingham alleged that he is the sole shareholder and President of VBS and that, in 1994, he received an unsolicited telephone call from Kulman, an account representative for Biltmore. Claimant asserted that he told Kulman that he would only consider investing in "blue chip" companies because he did not want to lose money and needed safety. Claimants further asserted that Kulman stated that Willingham can not make any money with these types of companies and he recommended that Willingham purchase Telephonics Argentina.

Claimants alleged that a pattern of unsolicited telephone pressure continued sometimes every day or once or twice a week. Claimants asserted that Kulman's relentless high pressure selling tactics followed a pattern endorsed and encouraged by Biltmore. Moreover, claimants asserted that Kulman did not disclose that he was pursuing a predetermined selling strategy designed by Biltmore and which had nothing to do with Willingham's individual investment objectives. Claimants maintained that Kulman repeatedly misrepresented the suitability of the investments, misrepresented the availability and reliability of potential insider information, used unsubstantiated representations to overcome any reluctance Willingham might have had and misrepresented that commissions would not be charged. Claimants further maintained that respondents controlled and excessively traded their accounts so as to unjustly enrich themselves by generating unnecessary fees and expenses.

Claimants alleged that the respondents violated the NASD Rules of Fair Practice, violated Section 10b of the Securities Exchange Act, violated Ohio State Securities laws, breached the express and implied terms of their contract, breached their common law fiduciary duties and were negligent. Claimants further alleged that Biltmore knowingly directed or indirectly controlled or had the ability to control, participated with or materially assisted its registered representative in the commission of a statutory, regulatory and common law violations and was, therefore, liable to the same extent as its registered representative.

Biltmore and Kulman maintained that Willingham was a sophisticated investor with prior experience in the stock market. In addition, the respondents maintained that the Willingham was provided with all required and requested financial information for each investment. Respondents contended that Willingham authorized and directed each and every transaction in the accounts after discussing them with Kulman and thoroughly considering their merits and risks. Respondents further contended that, based upon Willingham's experience, financial status and stated investment objectives of growth and speculation, Willingham's investments were suitable. Respondents maintained that claimants lost money because their investments decreased in value and not because of any wrongdoing on their part.

As affirmative defenses, respondents maintained that claimants authorized and directed each and every transaction, that the Statement of Claim failed to set forth any cause of action against respondents, that claimants were estopped by their own conduct from asserting any claims, that claimants ratified each and every transaction and that claimants waived all claims. Respondents further maintained that they did not violate any applicable law or rule, that they made no misrepresentation or omission to claimants, that they did not act negligently in handling the claimants' account, that they did not breach any fiduciary duty owed to the claimants, that each

and every transaction for claimants' account was suitable, that Biltmore properly supervised its account executives with regard to the claimants' accounts at Biltmore, that they did not breach any agreement with the claimants and that the claimants may not recover for damages in excess of any actual loss.

RELIEF REQUESTED

Claimants requested damages in the amount of at least \$192,000.00, pre-award and post-award interest, unspecified punitive damages, costs of this action, reasonable attorneys' fees, and such other relief as the arbitration panel deemed just, equitable, and appropriate in this case.

Respondents requested that the Statement of Claim be dismissed and that Biltmore be awarded its costs, including attorneys' fees, incurred in defending this action.

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. Respondents Biltmore and Kulman be and hereby are jointly and severally liable and shall pay claimant compensatory damages in the amount of \$159,088.00.
2. The panel hereby finds that respondents' Biltmore and Kulman breached their fiduciary duties and committed fraud and, therefore, respondents Biltmore and Kulman be and hereby are jointly and severally liable and shall pay claimant punitive damages in the amount of \$100,000.00.
3. Each party shall bear their own costs, including attorneys' 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 previously paid by claimant and have assessed the following forum fees:

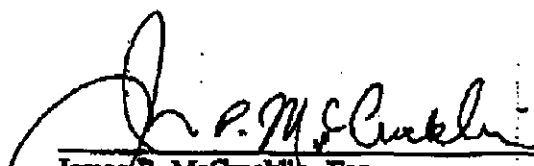
pre-hearing conference	=	\$ 300.00
4 hearing sessions x \$750.00	=	<u>\$3,000.00</u>
Total fees	=	\$3,300.00

1. Claimants be and hereby are jointly and severally liable for the sum of \$1,650.00, representing one-half of the fees assessed for the pre-hearing conference and the hearings in this matter. Claimants previously deposited \$750.00 with the NASD and, therefore, claimants are liable and shall pay \$900.00 to the NASD

2. Respondents be and hereby are liable and shall pay to the NASD the sum of \$1,650.00, representing one-half of the fees assessed for the pre-hearing conference and the hearings in this matter.

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

Arbitrators' Signatures


James P. McCrocklin, Esq.
Chairperson-Public Arbitrator

Hugh C. Durbin
Public Arbitrator

John C. Schenkenfelder
Industry Arbitrator

Date of Decision: September 9, 1996

Arbitrators' Signatures

James P. McCrocklin, Esq.
Chairperson-Public Arbitrator



Hugh C. Durbin
Public Arbitrator

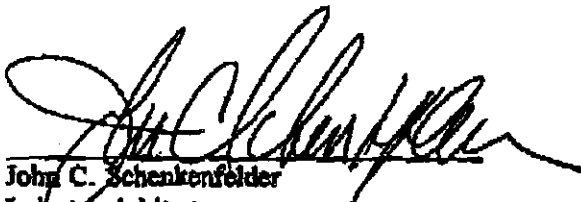
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