

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Betty Murphy & Brian Murphy

95-01720

Names of Respondents

**Noble Investment Company of Palm Beach
Jeffrey Schuler**

REPRESENTATION

For Claimants, Betty Murphy and Brian Murphy ("the Murphys"): Robert Wayne Pearce of Lerner & Pearce, Fort Lauderdale, FL.

For Respondent Noble Investment Company of Palm Beach ("Noble"): Cory B. Nass, Esq., of Noble Investment Company of Palm Beach, Boca Raton, FL.

For Respondent Jeffrey M. Schuler ("Schuler"): Pro se.

CASE INFORMATION

Statement of Claim filed on: April 4, 1995.

Claimants' Submission Agreement signed on: February 15, 1995.

Joint Statement of Answer filed by Respondents Noble Investment Company of Palm Beach and Jeffrey M. Schuler on: June 1, 1995.

Respondent Noble's Submission Agreement signed on: June 1, 1995, by Cory B. Nass, General Counsel, on behalf of Noble.

Respondent Schuler's Submission Agreement signed on: June 1, 1995.

HEARING INFORMATION

On February 21 and 22, 1996, in Fort Lauderdale, Florida, a hearing lasting four (4) sessions was conducted.

CASE SUMMARY

Claimants alleged that at the time Claimant, Betty Murphy, opened an account with Respondents Noble and Schuler, she was recently widowed and seeking to invest the proceeds from the sale of property she had inherited and the proceeds of a life insurance policy; that she opened an account with the brokerage firm and named her son, Claimant, Brian Murphy, as an owner for estate planning purposes; that neither of the Claimants had any meaningful experience in investing in the stock market; that Mrs. Murphy sought advice on how to invest for her retirement safely and that Schuler recommended several companies in which Noble was the underwriter and then the market maker, namely: Capital Multimedia, EV Environmental, FutureMedia, and New Vision Technologies; that these securities and others were misrepresented as safe investments for Mrs. Murphy's retirement and were unsuitable because they were speculative investments.

Claimants made claims against Respondents for violation of sections 517.301 and 517.211, Florida Statutes, common law fraud, breach of fiduciary duty, negligence, negligent supervision, and breach of contract.

Respondents alleged that Claimants' investment objective was "growth" and that Respondent, Schuler accordingly recommended long-term investments with growth potential but did not promise, predict, nor guarantee specific returns. Respondents denied that Claimant, Brian Murphy was a party in name only and alleged that Mr. Murphy, an experienced investor, was meaningfully involved in all discussions regarding Claimants' joint account and that in light of Claimants' stated investment objective, Respondents further denied that the recommended investments were unsuitable; that the investments were misrepresented; and that they were unreasonable. Respondents maintained that the risks inherent in the investments were fully explained to Claimants and that Respondent Schuler, a registered broker for fourteen years, has considerable investment experience.

As affirmative defenses, Respondents raised estoppel, ratification, contributory negligence through failure to exercise reasonable diligence, the economic loss rule, and failure to allege specific facts for which a response can be provided.

RELIEF REQUESTED

Claimants sought the statutory remedy for violation of the Florida securities laws in an amount equal to \$40,485.00 plus interest; attorneys fees in the amount of \$22,765.00, to which Respondents stipulated as a reasonable amount; punitive damages in an amount to be determined by the Arbitration Panel; and \$1,749.00 in costs, including expert witness fees, filing fees, photocopying costs; and such other relief as the Panel deemed just and appropriate.

Respondents requested that the Claim be dismissed and/or that a judgment for no cause of action be entered against Claimants and strongly opposed the awarding to Claimants of legal fees, expert witness fees, and other costs and expenses. Respondents also requested that they receive compensation for all costs and attorneys fees incurred.

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 remains 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. Respondents, Noble and Schuler, are found jointly and severally liable and shall pay to Claimants, Betty Murphy and Brian Murphy, damages in the amount of \$40,485.00.
2. Respondents, Noble and Schuler, are found jointly and severally liable and shall pay to Claimants attorneys' fees in the amount of \$12,500.00, pursuant to section 517.211 of the Florida Statutes.
3. Claimants' requests for interest and punitive damages are hereby denied.
4. Respondents' requests for attorneys' fees and costs of litigation are hereby denied.
5. All other claims are denied.

OTHER COSTS

1. Respondents are further found jointly and severally liable and shall pay to Claimants an amount of \$1,749.00 for costs incurred, including expert witness fees, non-refundable filing fees, and photocopying costs.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$1,600.00 (4 sessions x \$400.00 per session).

1. Respondents are found jointly and severally liable and shall pay Forum Fees in the amount of \$1600.00, \$400.00 of which shall be paid directly to Claimants and the remaining \$1,200.00 shall be paid to the NASD.
2. The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimants.

3. The NASD shall retain the surcharge of \$200.00 paid by Respondent, Noble.
4. The NASD shall refund Claimants \$130.00 which represents overpayment of forum fees in said amount.

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

ARBITRATORS

Concurring Arbitrators' Signatures

/s/

Randy L. Rubin, Esq.

Public/Chairperson

/s/

Andrew Bartfay

Industry/Panelist

/s/

John R. Camp, Jr.

Public/Panelist

Date of Decision: April 3, 1996