

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Edward C. & Genevieve C. Thier

95-01878

Name of Respondents

Sheen Financial Resources, Inc.
David R. Bossert
Edwin N. Legard, Jr.
Brian J. Sheen

REPRESENTATION

For Claimants: Stephen D. Spivey, Esq. of Stephen D. Spivey, P.A., Ocala, FL.

For Respondent, David R. Bossert ("Bossert"): Marc S. Dobin, Esq. of Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, FL.

For Respondent, Edwin N. Legard, Jr. ("Legard"): Stanley T. Padgett, Esq. of Padgett & Mierzwinski, P.A., Tampa, FL.

The Respondents Sheen Financial Resources, Inc. ("SFR") and Brian J. Sheen ("Sheen"), appeared pro se.

CASE INFORMATION

Statement of Claim filed: April 19, 1995.

Claimants' Submission Agreement signed on: April 13, 1995.

Statement of Answer filed by Respondent, Bossert on: June 16, 1995.
Respondent, Bossert's Submission Agreement signed on: May 11, 1995.

Statement of Answer filed by Respondent, Legard on: June 16, 1995.
Respondent, Legard's Submission Agreement signed on: June 15, 1995.

Statement of Answer filed by Respondents SFR and Sheen on: June 16, 1995.
Respondents SFR and Sheen did not file Submission Agreements as required by Rules 10301 and 10314 of the Code of Arbitration Procedure ("Code").

HEARING INFORMATION

On July 31, 1996 a telephonic pre-hearing conference lasting one session was conducted with the Chairperson.

On August 6, and 7, 1996, in Tampa, FL, hearings lasting 4 sessions were conducted.

CASE SUMMARY

Claimants alleged that in April of 1989 they responded to newspaper and radio advertisements of the Respondents and attended a seminar conducted by the Respondent SFR. At that time, the Claimants were seventy-three (73) and seventy-five (75) years old and Edward Thier had just retired. The Claimants further alleged the following: that they had no prior investment experience other than the purchase of certificates of deposit in their IRA accounts; that their investment objectives were preservation of principal and income; that between April 27, 1989 and November 8, 1990 the Respondents induced the Claimants to invest in six different limited partnership interests for a total of \$84,000.00; that none of the partnership interests were suitable investments for retirees in a low or non-existent tax bracket who were risk averse, and income oriented; that with one exception, there is no secondary market for these limited partnership interests; and, as a result the Claimants own a series of investments that produce little financial benefits and cannot be liquidated.

Respondent Bossert denied the allegations contained in the Statement of Claim and alleged the following: the purchases of the limited partnership interests were made by the Claimants after a full explanation of the investments and delivery of the prospectuses; that the Claimants only made purchases after they attended seminars presented by Respondents Sheen and SFR; that the claimants represented in writing that they understood the investments and received the prospectuses for each investment; and, that the limited partnership investments were a small portion of the overall assets of the Claimants.

Respondent Legard alleged that at all times he acted in good faith and in the best interest of the clients, and that he made no misrepresentation of any existing material fact.

Respondent Sheen asserted that there is no evidence provided by the Claimants as to any actions that could provide a basis for any claims against Sheen or SFR.

RELIEF REQUESTED

Claimants seek a rescission of all investments in the referenced real estate limited partnerships, disgorgement of all commissions and profits of the Respondents generated from the referenced

trades, and punitive damages.

Respondents requested dismissal of the claim in its entirety and an award of costs and attorneys fees.

OTHER ISSUES CONSIDERED & DECIDED

- 1) By correspondence dated October 18, 1996, from Claimants' counsel, Claimants voluntarily dismissed Respondents Brian J. Sheen individually and Sheen Financial Resources, Inc.
- 2) 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 originals remain on file with the NASD.

AWARD

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

- 1) Respondents, Bossert and Legard, are found not liable and, therefore, all claims against them are hereby dismissed.
- 2) Claimants' request for rescission, disgorgement of commissions and punitive damages are hereby denied.
- 3) Respondents requests for costs and attorney's fees are hereby denied.

OTHER COSTS

Other than as provided below, the parties shall bear all of their own costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,300.00 (one pre-hearing conference x \$300.00 plus four hearing sessions x \$500.00).

- 1) Claimants are hereby assessed \$2,300.00 for which the NASD shall retain the \$500.00 previously deposited by them in partial satisfaction thereof leaving a balance due to the

NASD of \$1,800.00.

- 2) The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimants.
- 3) Respondent, Sheen Financial Resources, Inc., is still owing \$300.00 pursuant to Rule 10333 of the Code, for the previously assessed member surcharge.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Public

George Felos, Esq.

/s/

Industry

Peter F. Crowell

/s/

Public

Dale W. Hagen, Esq.

February 10, 1997

Date of Decision: _____