

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Marilyn D. Jourdet & Mary Lynn Gonzmart

95-02205

Name of Respondent

Robert D. Sherwin

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 9, 1995 Claimants Marilyn D. Jourdet and Mary Lynn Gonzmart ("Claimants"), who appeared Pro Se, alleged that they held account #30P-06646-017 with Kidder Peabody & Company ("KPC") as joint tenants with the right of survivorship. Claimant Marilyn D. Jourdet ("Jourdet"), further alleged that KPC's representative Respondent Robert Sherwin ("Respondent"), recommended to that she should invest in First Executive stocks and she followed that advice to her detriment. Jourdet contended that Sherwin was negligent in failing to inform her to sell her Old Stone stocks that were decreasing in value daily. Jourdet further contended that she informed Respondent that she desired conservative investments to provide income for her retirement. Jourdet alleged that Sherwin was reckless by investing the money on only two stocks. Jourdet further alleged that she received a small settlement from Kidder, Peabody & Company for the First Executive Stock but believes Respondent should be held liable for an additional amount. Jourdet contended that as a result of the above, she has suffered a loss for which the Respondent should be held liable.

Respondent Robert Sherwin, through his representative and in-house counsel at Kidder Peabody & Company, David Rivera, Esq., maintained that the Claimants were members of a class action with regard to the First Executive stocks and are therefore barred from relitigating this claim. Respondent further maintained that at the time First Executive was recommended it was an A-plus rated company. Respondent contended that the time of the Old Stone Stock recommendation the stocks were considered a conservative investment. Respondent further contended that Jourdet failed to mitigate her damages, by law, when she refused to follow Respondents strong recommendation to sell the Old Stone Stock in December of 1991. Respondent maintained as a result of the above, he should not be held liable.

RELIEF REQUESTED

Claimants Marilyn D. Jourdet and Mary Lynn Gonzmart, requested \$10,000.00 in actual damages.

Respondent Robert Sherwin, requested that the claims of the Claimants be dismissed.

AWARD

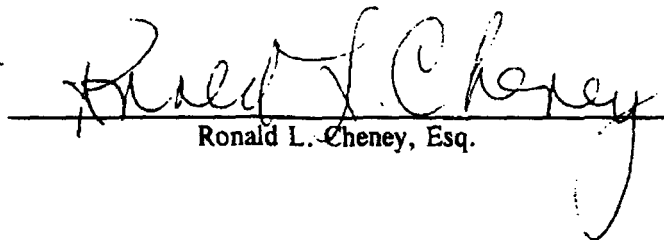
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Ronald L. Cheney, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Marilyn D. Jourdet and Mary Lynn Gonzmart, on April 28, 1995 and not by the Respondent Robert D. Sherwin, as is required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Marilyn D. Jourdet and Mary Lynn Gonzmart, against Respondent Robert Sherwin, are denied in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Marilyn D. Jourdet and Mary Lynn Gonzmart, shall be retained by the NASD, Inc.

AFFIRMATION

I, **RONALD L. CHENEY, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Ronald L. Cheney, Esq.

DATE OF DECISION: January 31, 1996