

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Bonnie M. Bibey

95-03100

Name of Respondent(s)

Noble Investment Co. of Palm Beach  
Jeffrey M. Schuler

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REPRESENTATION

For Claimant Bonnie M. Bibey ("Bibey"): Casey Mills, Esq. of the law office of Casey Mills, Esq., Ft. Lauderdale, Fl.

For Respondents Noble Investment Co. of Palm Beach ("Noble") and Jeffrey M. Schuler ("Schuler"): Cory B. Nass, Esq. of Noble, Boca Raton, Fl.

CASE INFORMATION

Statement of Claim filed: June 26, 1995. Claimant's Submission Agreement signed on: June 7, 1995.

Joint Statement of Answer filed by Respondents on: August 24, 1995. Respondent Noble's Submission Agreement signed on: August 23, 1995 by Cory Nass on behalf of Noble. Respondent Schuler's Submission Agreement signed on August 23, 1995.

HEARING INFORMATION

On November 20, 1996 a telephone prehearing conference was conducted with two of the three arbitrators present. On November 21 and 22, 1996 hearings lasting four sessions were conducted in Ft. Lauderdale, Florida.

## CASE SUMMARY

Claimant, alleged that Schuler effected unauthorized trades in her account and that such trades were unsuitable. Claimant made claims for: violation of Section 517.301 of the Florida Securities and Investor Protection Act; breach of fiduciary duty; violation of Rule 10b-5 and Section 10b of the Securities Exchange Act of 1934; failure to supervise; and, negligence.

Respondents alleged that Claimant's allegations contradict the facts and are inconsistent with Claimant's actions. Respondents alleged that Claimant's stated investment objectives were growth and income and that Claimant sought Respondent Schuler's services because she was dissatisfied with her investment returns at the time. Respondents alleged that Claimant and Schuler met for over two hours prior to opening an account to review Claimant's investment objectives and financial situation. Respondents alleged that an investment plan was discussed in detail and agreed upon by Claimant, which included investing approximately 10% of her portfolio (which included \$550,000.00 in liquid assets) in small cap growth stocks. Respondents alleged that Schuler discussed the nature of each investment and the risks involved and that Claimant gave no indication at the time that she was unaware of, or misunderstood, the nature of the risks involved. Furthermore, Respondents alleged that, taken in the context of her total portfolio, the investments made by Schuler were not unsuitable.

Respondents net maintained that Claimant paid for trades that she now alleges were unauthorized, never questioned any purchases in her accounts or alleged any wrongdoing until this proceeding was initiated over one year after she opened her account. Respondents alleged that her allegations were motivated by a drop in the market value of her account, rather than the alleged wrongdoing.

## RELIEF REQUESTED

Claimant requested an award for rescission and damages, plus interest, attorney's fees, costs and forum fees.

Respondents requested a dismissal of the claim plus costs and attorney's fees.

## 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(s) remain on file with the NASD.

### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), 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 liable, jointly and severally, and shall pay to Claimant the amount of \$20,000.00 plus prejudgment interest at the rate of 10% from March 18, 1994 to February 24, 1995 in the amount of \$1,879.64 for a total due to Claimant of \$21,879.64.
2. Claimant's requests for rescission, attorney's fees and costs are denied.
3. Respondents' requests for costs and attorney's fees are denied.

### OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### FORUM FEES

Pursuant to Rule 10332(c) (formally Section 43(c)) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$2,500.00 (four sessions x \$500.00 per session plus \$500.00 for the prehearing conference on November 20, 1996).

1. Respondents Noble and Schuler are hereby assessed \$2,500.00, jointly and severally, payable to the NASD.
2. The NASD shall retain the \$500.00 hearing session deposit previously deposited by Claimant and shall apply same towards the

\$500.00 postponement fee due for the postponement of the February 26 and 27, 1996 hearing dates.

3. The NASD shall retain the \$150.00 non-refundable filing fee previously paid by Claimant.

4. Respondent Noble is hereby assessed the \$300.00 member surcharge pursuant to Rule 10333 (formally Section 45) of the NASD Code of Arbitration Procedure which became due and owing when the NASD perfected service of the claim on Noble.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

\_\_\_\_\_/s/\_\_\_\_\_  
Public/Chairman

Michael Lukasiwich, Esq.

\_\_\_\_\_/s/\_\_\_\_\_  
Industry

Dione Pritchard

\_\_\_\_\_/s/\_\_\_\_\_  
Public

John Hearn, Esq.

Date of Decision: January 8, 1996

The following Arbitrator(s) concur(s) with the award:

none

The following Arbitrator(s) dissent(s) with the award:

none