

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joan Eaton

95-03452

Name of Respondent

Paulson Investment Company Inc.

REPRESENTATION

For Claimant, W. Andrew Clayton, Jr., Esq., of The Clayton Law Firm, P.A., Sarasota, FL.

For Respondent, Keith A. Ketterling, Esq. of Stoll Stoll Berne Lokting & Shlachter P.C., Portland, OR.

CASE INFORMATION

Statement of Claim filed July 18, 1995.

Claimant's Submission Agreement signed on July 11, 1995.

Statement of Answer filed by Respondent on September 6, 1995.

Respondent's Submission Agreement signed by Harry L. Striplin on behalf of Respondent on July 31, 1995.

HEARING INFORMATION

On April 12, 1996, a pre-hearing conference lasting one session was conducted via telephone call with an arbitrator.

On September 24, and 25, 1996, in Osprey, Florida, a hearing lasting six sessions was conducted.

CASE SUMMARY

Claimant, who resides in Florida, alleged that the nature of trading in low-priced and speculative securities in her account was unsuitable and excessive in light of her stated investment objectives, financial circumstances, prior investment experience and needs, and that Respondent, based in Oregon, failed to adequately supervise the activities of the registered representative, who was located in California. Specifically, Claimant, who is in her 60s and unmarried, alleged that at the time she deposited a total of \$147,885, which was most of her liquid net worth, with Respondent starting in January, 1993, (1) she had no prior investment experience, (2) she is handicapped and in a wheel chair, (3) her only source of income now and in the future will be her available investment funds, which she inherited, and (4) that preservation of her capital was critical in her circumstances. Claimant alleged that Respondent is liable for the misrepresentations, omissions and negligence of its registered representative, Robert Todd Bollman, as a "control person" under Section 20 of the Securities Exchange Act of 1934, as well as under the doctrine of *respondeat superior*, and that it failed to adequately supervise Mr. Bollman. Claimant further alleged that she did not discover the nature of the alleged wrongdoing until after Mr. Bollman committed suicide in March, 1995; her claim was filed three months later.

Respondent denies Claimant's allegations. In particular, Respondent notes that Claimant signed a number of documents indicating that she wished to engage in speculative investing. Respondent also alleges that Claimant spoke with members of Respondent's Compliance Department and with a NASD examiner, in every instance indicating that she was aware of the trading in her account and understood the risks associated with such trading. Additionally, Claimant failed to mitigate her damages. In one instance, Respondent's Vice President of Compliance offered to reposition Claimant's entire account in a more conservative portfolio. Claimant indicated that she did not want her account repositioned and that she understood the risks involved with the speculative trading in her account.

RELIEF REQUESTED

Claimant requested selective rescission damages in the amount of \$99,041.00 under the Florida Securities And Investors Protection Act, F.S. 517.301, as referenced in *Kane v. Shearson Lehman Hutton, Inc.*, statutory interest in the amount of \$38,450.00, punitive damages, costs and attorney fees.

Respondent requests that the claims be dismissed and for an award of its attorney fees and costs necessarily incurred herein.

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 originals remain 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) Respondent, Paulson Investment Co., Inc., is found liable and shall pay to the Claimant the amount of \$31,850.00 inclusive of interest.
- 2) Claimant's requests for punitive damages, costs and attorney fees are hereby denied.
- 3) Respondent's requests for attorney fees and costs are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,700 (one pre-hearing conference x \$300 plus six hearing sessions x \$400).

- 1) Claimant is hereby assessed \$1,350 for which the NASD shall retain the \$400 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$950.
- 2) Respondent is hereby assessed \$1,350 payable to the NASD.
- 3) The NASD shall retain the non-refundable filing fee of \$120 previously deposited by the Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Public

George S. Coit, Jr., Esq.

/s/

Industry

Heather D. Fitzenhagen, Esq.

/s/

Public

Patricia A. Gunn, CPA

November 27, 1996

Date of Decision: _____