

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

William R. Olson and Josephine Olson;  
Judy Anderson and Lewis Anderson; and  
Ann Witser

NASD Arbitration  
No. 95-03835

Name of Respondent(s)

Ralph Wetzstein  
KMS Financial Services, Inc.

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REPRESENTATION

For Claimants: F. Mike Shaffer, Esq., Gordon, Thomas, Honeywell,  
Malanca, Peterson & Daheim, Tacoma, Washington

For Respondents: Fredrick D. Huebner, Esq., Helsell, Fetterman,  
Martin, Todd & Hokanson, Seattle, Washington

CASE INFORMATION

Statement of Claim filed: August 30, 1995

Memorandum Opposing Respondents' Motion to Dismiss and Declaration  
of Josephine Olson filed: December 15, 1995

Claimants' Memorandum Re: Supplemental Declaration of Josephine  
Olson filed: December 22, 1995

Claimants' Submission Agreements signed as follows:

Judy and Lewis Anderson: September 6, 1994 and August 23,  
1995

William and Josephine Olson: March 20, 1995 and August 24,  
1995

Ann Witser: September 6, 1994 and August 23, 1995

Joint Statement of Answer filed by Respondents: September 29, 1995

Respondents' Section 15 Motion to Dismiss filed: November 2, 1995

Respondents' Reply Memorandum on Section 15 Motion to Dismiss  
filed: December 19, 1995

Respondents' Submission Agreements signed: October 4, 1995

National Association of Securities Dealers, Inc. (NASD) Section 15  
Ruling filed: January 22, 1996

#### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

May 28, 1996 (one session)

Hearing Date(s)/Session(s): June 3, 1996 (two sessions)

June 4, 1996 (two sessions)

June 5, 1996 (one session)

Hearing Location:

Seattle, Washington

#### CASE SUMMARY

Claimants filed the above-captioned dispute for damages under the Washington State Securities Act, federal securities laws, and under Washington consumer protection and common law. Claimants alleged that they are elderly and retired investors who have been damaged by their trusted financial consultant, Ralph Wetzstein and his employer, KMS Financial Services, Inc. Referencing investments in limited partnerships and various securities, Claimants further alleged that each Claimant's account was fraudulently mismanaged by Wetzstein, who followed the same procedure in each account; misrepresentations; unsuitability; violation of the Securities Exchange Act of 1934, 15 USC Section 78j, and violation of the Washington Securities Act, RCW 21.20 et seq., as well as Securities Exchange Commission Rule 10b-5, and the Rules of the NASD; breach of fiduciary duty; negligence; and violation of the Washington Consumer Protection statute, RCW 19.86.020 et seq.

Respondents denied Claimants' allegations of wrongdoing and alleged that they have not violated any federal or state statute or common law rule. Respondents further alleged that this action has been brought by investors who purchased limited partnerships, real estate investment trusts and mutual fund interests between 1977 and 1987; and that Claimants received full disclosure of the risks and rewards of investing in all the securities they purchased including the REITs and the limited partnerships. Respondents further alleged that eight years after the last investment and ten to eleven years after the bulk of their investments, Claimants seek to recover damages for investments that did not turn out well, while keeping the substantial profits from investments which did perform well. Respondents also asserted affirmative defenses.

#### RELIEF REQUESTED

Claimants requested:

1. An award in their favor for rescission or for damages relating to their purchase of limited partnerships and other speculative securities, plus interest on all losses, plus prejudgment interest, costs, and attorney's fees, pursuant to RCW 21.20.430 and the laws governing prejudgment interest in the State of Washington;
2. An award of all damages sustained by Claimants, including the return of their entire investment interest, with reasonable compensation for what they would have made if the funds had been properly invested, lost profits, costs, and attorney's fees, plus any fees or commissions wrongfully taken by Respondents, plus prejudgment interest on all such amounts;
3. Damages under the Washington State Consumer Protection Act, RCW 19.86.020 et seq., including actual damages, lost profits, treble damages, costs, and attorney's fees;
4. General and special damages sustained by Claimants for their emotional and mental anxiety and suffering past, present, and future based on Claimants' allegations of negligence and breaches of fiduciary duties by Respondents; and
5. Such other and further favorable relief as the panel deems just and proper.

Respondents requested:

1. That Claimants' claims be severed pursuant to a

motion to be filed by Respondents;

2. That Claimants' claims be dismissed as not arbitrable pursuant to a motion to be filed by Respondents and NASD Code Section 15;

3. That Claimants' claims be dismissed as barred by the statute of limitations;

4. That, in the alternative, Claimants' claims be dismissed on the merits; and

5. That Respondents be awarded their reasonable costs and attorneys' fees.

#### OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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. The panel found the Respondents jointly and severally negligent.

2. Based on Respondents' affirmative defenses and the NASD's eligibility rule, the panel dismissed with prejudice all claims by Claimant Ann Witser.

3. Respondents are jointly and severally liable for and shall pay to Claimants Judy and Lewis Anderson the sum of \$60,000.00.

4. Respondents are jointly and severally liable for and shall pay to Claimants William R. and Josephine Olson the sum of \$23,000.00.

5. All other claims and defenses are dismissed.

6. The parties shall each bear their respective costs

including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$750.00 hearing session deposit previously deposited by the Claimants. Forum fees are assessed against Respondents, jointly and severally, in the amount of \$4,050.00, calculated as follows: One pre-hearing session times \$300.00 plus five hearing sessions times \$750.00.

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

ARBITRATORS

Name \_\_\_\_\_ Public / Industry

William L. Hawes, CPA

Public Arbitrator

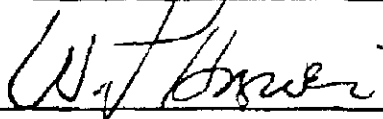
Carl A. Jonson, Esq.

Public Arbitrator

Christopher B. Wells, Esq.

Industry Arbitrator

Concurring Arbitrators' Signatures



William L. Hawes, CPA

\_\_\_\_\_  
Carl A. Jonson, Esq.

\_\_\_\_\_  
Christopher B. Wells, Esq.

Date of Decision: \_\_\_\_\_

Date Served: 07/09/96

including attorney's fees.

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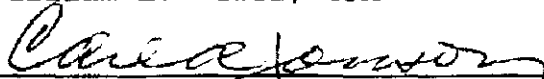
Public Arbitrator

Christopher B. Wells, Esq.

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William L. Hawes, CPA

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Carl A. Jonson, Esq.

  
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Christopher B. Wells, Esq.

Date of Decision: 6-27-96

Date Served: 07/09/96