

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Winifred A. Balfanz

and

95-04557

Name of Respondent

Norwest Investment Services, Inc.

David Behler

Bruce G. Warner

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REPRESENTATION OF PARTIES

Winifred A. Balfanz ("Claimant") was represented by Paul G. Bursiek, Esq., Pendleton, Friedberg, Wilson, Hennessey & Meyer, P.C., Denver, CO.

Norwest Investment Services, Inc. ("Respondent NISI") David Behler ("Respondent Behler") and Bruce G. Warner ("Respondent Warner") were represented by John S. Lutz, Esq., LeBoeuf, Lamb, Greene & MacRae, Denver, CO.

CASE INFORMATION

The Statement of Claim was filed on or about September 26, 1995. Submission Agreement of Claimant Winifred A. Balfanz was signed on September 14, 1995.

Statement of Answer was filed by Respondents Norwest Investment Services, Inc., David Behler and Bruce G. Warner on or about November 16, 1995. Submission Agreement of Respondent David Behler was signed on November 14, 1995. Submission Agreement of Respondent Bruce G. Warner was signed on November 15, 1995.

HEARING INFORMATION

A pm-hearing conference was held on Wednesday, July 3, 1996, Robert C. Roth, Esq. presiding, for one (1) session.

The hearing was held on Monday, July 22, 1996 for two (2) sessions, Tuesday, July 23, 1996 for two (2) sessions and Wednesday, July 24, 1996 for two (2) sessions in Denver, Colorado for a total of one (1) pre-hearing and six (6) hearing sessions.

CASE SUMMARY

Claimant alleged that Respondents engaged in violations of Federal securities laws; the securities laws of the State of Colorado; breach of fiduciary duty; gross negligence; common law fraud; and breach of contract. Claimant further alleged that Respondent Norwest Investment Services, Inc. failed to properly supervise Respondents Behler and Warner. Specifically, Claimant alleged that Respondents ignored her specific investment objective of absolute preservation of capital and income.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that contrary to the allegations set forth in the Statement of Claim, they explained to the Claimant that the investments with Norwest Investment Services, Inc. were not insured by the U.S. government. Respondents further stated that the investments in Putnam U.S. Government Income Trust Class B met the Claimant's investment objectives of income and preservation of capital. Respondents disputed that the Claimant's investment objectives were those stated in the Statement of Claim.

RELIEF REQUESTED

Claimant requested an award of damages from all Respondents, jointly and severally, in the amount of \$109,527.08; unspecified punitive damages; pre-judgment and post judgment interest at the statutory rate; costs and disbursements, including reasonable attorneys' fees; and such other relief as is just and proper.

Respondents requested that all claims asserted against them be dismissed with prejudice and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Norwest Investment Services, Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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.

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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. Respondents Norwest Investment Services, Inc., David Behler and Bruce G. Warner shall be and hereby are jointly and severally liable for and shall pay to the Claimant Winifred A. Balfanz the sum of **twenty six thousand four hundred dollars (\$26,400)**.
2. Interest at the rate of 8% per annum is awarded on the above referenced sum from and inclusive of August 26, 1992 to and inclusive of the date this award is paid in full.
3. All claims alleging common law and statutory fraud, including state and federal securities law fraud claims shall be and hereby are dismissed.
4. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$300 and six (6) sessions x \$750 = \$4,800 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant Winifred A. Balfanz. Claimant Winifred A. Balfanz shall be and hereby is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,650 and Respondents Norwest Investment Services, Inc., David Behler and Bruce G. Warner shall be and hereby are jointly and severally liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,400 as the balance due for forum fees.

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Pursuant to § 10333 of the NASD Code of Arbitration Procedure, the NASD shall retain the non-refundable member surcharge in the amount of \$350 paid by Respondent Not-west Investment Services, Inc. Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Robert C. Roth, Jr., Esq.

Robert C. Roth, Jr., Esq.

Public Arbitrator, Presiding Chair

August 16, 1996

/s/ Anthony J. Kohler, Esq.

Anthony J. Kohler, Esq.

Public Arbitrator

August 12, 1996

/s/ Gerald W. Wischmeyer, Esq.

Gerald W. Wischmeyer, Esq.

Industry Arbitrator

August 10, 1996

Gerald W. Wischmeyer, Esq.
Industry Arbitrator