

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between© National Association of
Securities Dealers

George E. Faust and Carma R. Faust,

1004

Claimants,

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v.

CASE No. 95-04575

Berthel Fisher & Co. Financial Services and
Craig Eugene Halfpop,Respondents.

REPRESENTATION OF PARTIES

Claimants, George E. Faust and Carma R. Faust were represented by Gail E. Boliver, Esquire, Sole Practitioner, of Marshalltown, Iowa.

Respondents, Berthel Fisher & Co. Financial Services and Craig Eugene Halfpop were represented by Vincent D. Louwagie, Esquire of Fruth & Anthony located in Minneapolis, Minnesota.

CASE INFORMATION

Claimants, George E. Faust and Carma R. Faust's Statement of Claim was filed on or about September 26, 1995.

Claimants, George E. Faust and Carma R. Faust's Submission Agreement was signed on September 20, 1995.

Respondents, Berthel Fisher & Co. Financial Services and Craig Eugene Halfpop's Statement of Answer was filed on or about November 21, 1995.

Respondent, Berthel Fisher & Co. Financial Services' Submission Agreement was signed on October 19, 1995 by Leslie Smith, Secretary of Bethel Fisher & Co. Financial Services.

Respondent, Craig Eugene Halfpop's Submission Agreement was signed on October 6, 1995.

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HEARING INFORMATION

Pre-hearing conferences were held before one arbitrator on:

May 16, 1995 for one (1) session; and
July 3, 1996 for one (1) session

The hearing was held on:

July 22, 1996 for two (2) sessions; and
July 23, 1996 for one (1) session,

The hearing was held in Omaha, Nebraska.

CASE SUMMARY

In the Statement of Claim George E. Faust and Carma R. Faust ("Claimants") alleged that Berthel Fisher & Co. Financial Services and Craig Eugene Halfpopp ("Respondents") misrepresented investments by false statements and by omissions, upon which Claimants relied and suffered damages. Claimants asserted that they were not sophisticated investors; that they informed Respondents that their investment objectives were retirement, long-term growth, and limited risk; that Respondents represented limited partnership investments as low risk; and that Respondents recommended limited partnerships assuring Claimants that limited partnerships were profit oriented and that they should achieve at least a 12 % rate of return while not putting the principal at risk. Claimants stated that the limited partnership purchases were as follows:

	<u>Limited Partnership</u>	<u>Date of Purchase</u>	<u>Original Investment</u>
1.	VMS Stragic Land Fund II	12/21/87	\$25,000
2.	Gemini 87-88 XIII, LP	12/31/87	\$25,000
3.	Larken Income Plus LP III	1/5/88	\$ 27,350
4.	American Cable T.V. Investors 5 LTD	1/5/88	\$ 10,000
5.	Southmark/CRCA Health Care Fund VIII, LP	1/5/88	\$25,000
6.	Ridgewood Energy Leasebank-V, LP	2/13/90	\$ 50,000

Claimants further asserted: that they were not given a prospectus for these limited partnerships at the time of their purchase; that they asked Respondents what the commissions were on the limited partnerships, but Respondents would not tell him; that they did not receive any monthly statements from Respondents, but did receive some statements directly from the limited partnership sponsors;; that on several occasions they were unable to find information about their investments; and that whenever they voiced any questions or concerns or proposed to get out of their investment, Respondents strongly recommended to them that they keep their investments, or reassured them that

their investments would work out, or otherwise expressed optimism over the investments. Claimants alleged that they have been damaged in an amount no less than \$250,000.

Claimants made the following legal claims against Respondents: (1) violation of Section 10b of the Securities Exchange Act of 1934, and Rule 10b-5; (2) violation of the Iowa Uniform Securities Act; (3) breach of fiduciary duty; (4) negligent supervision; and (5) and breach of the NASDR Rules of Fair Practice for recommending unsuitable investments.

Respondents denied that Claimants were entitled to recover on any of their claims set forth in the Statement of Claim. Respondents stated: that Claimants were not the unsophisticated investors that they claimed to be; that Claimants never informed Respondents that they were risk averse; that Claimant informed Respondents that they had made significant investments in several speculative funds and that they wanted higher yields and income than they were obtaining from these funds; that Respondents never told Claimants that limited partnerships were low risk; that Respondents discussed the risks of each limited partnership that Claimants purchased and provided them with a prospectus for each one; and that Respondents never promised a 12% rate of return or stated that the principal would not be at risk. Respondents further stated: that there were no misrepresentations and the securities were suitable at the time they were purchased; that Claimants' claims were barred by statutes of limitations; that Claimants only invested a total of \$167,350 in the limited partnerships and had received in excess of \$89,000 from those investments, which means that their out-of-pocket loss was only about one-third of their claimed damages of \$250,000; and that Respondent, Berthel Fisher & Co. Financial Services' supervision of Respondent, Craig Eugene Halfpop was not negligent. Respondents also made the affirmative defense that the Statement of Claim should have been dismissed because it failed to state a claim for relief and failed to allege the claims with sufficient particularity.

RELIEF REQUESTED

Claimants, George E. Faust and Carma R. Faust requested an award in the sum of \$250,000 for compensatory damages and an undetermined amount of punitive damages plus attorneys' fees and costs.

Respondents, Berthel Fisher & Co. Financial Services and Craig Eugene Halfpop requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees. -

OTHER ISSUES CONSIDERED & DECIDED

On or about February 20, 1996, Respondents, Berthel Fisher & Co. Financial Services and Craig Eugene Halfpop filed a Motion to Dismiss in accordance with Section 15 of the Code of Arbitration Procedure (the "Code"). Claimants, George E. Faust and Carma R. Faust filed a

Response on or about March 4, 1996. Respondents, Berthel Fisher & Co. Financial Services and Craig Eugene Halfpup submitted a Supplemental Motion to Dismiss on or about June 11, 1996 to which Claimants, George E. Faust and Carma R. Faust filed a Response on or about June 11, 1996. After reviewing all relevant submissions, the arbitrators decided on or about June 26, 1996 that the motions were denied.

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 NASDR Office of Dispute Resolution.

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) That Respondent, Berthel Fisher & Co. Financial Services is liable for and shall pay Claimants, George E. Faust and Carma R. Faust the sum of \$33,000 in compensatory damages; and
- (2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference. There were two (2) pre-hearing sessions x \$300 = \$600, and there were three (3) hearing sessions x \$750 = \$2,250 in forum fees. Total forum fees are \$600 + \$2,250 = \$2,850. Pursuant to Section 43(b) of the Code, 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 Section 43(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASDR") 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 NASDR by Claimants, George E. Faust and Carma R. Faust. Pursuant to Section 45 of the Code, NASDR shall retain the non-refundable member surcharge in the amount of \$350 previously paid by Respondent, Berthel Fisher & Co. Financial Services.

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Respondent, Berthel Fisher & Co. Financial Services is hereby liable for and shall pay to the Claimants, George E. Faust and Carma R. Faust the sum of \$750 as reimbursement of forum fees. Respondent, Berthel Fisher & Co. Financial Services is liable for and shall pay to the NASDR the amount of \$2,100.

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

Signed:

Dated:

Martha Failing, Esquire
Martha Failing, Esquire
Public Arbitrator, Presiding Chair

September 9, 1996

Larry R. Trussell
Larry R. Trussell
Public Arbitrator

September 18, 1996

Richard L. Mitchell
Richard L. Mitchell
Industry Arbitrator

September 9, 1996

Date served by the NASDR: September 19, 1996