

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Scott McNairy,

Claimant,

v.

No. 95-04905

Morison Securities, Inc.,
Alfred Joseph Rashid,
Strommen & Associates,
Strommen Financial Group, and
Swenson Anderson Associates, Inc.

Respondent.

REPRESENTATION OF PARTIES

Claimant Scott McNairy was represented by Rebecca E. Bender, Esquire of Minneapolis, Minnesota.

Respondents Morison Securities, Inc., Strommen & Associates, Strommen Financial Group, and Swenson Anderson Associates, Inc. were represented by Alfred Rashid of Strommen & Associates, Strommen Financial Group, and Swenson Anderson Associates, Inc. all located in Minneapolis, Minnesota.

Respondent Alfred Joseph Rashid was represented by Wendy A. Snyder of Kelly & Berens, P.A. located in Minneapolis, Minnesota.

CASE INFORMATION

Claimant Scott McNairy's Statement of Claim was filed on or about October 16, 1995. Claimant Scott McNairy's Submission Agreement was signed on May 5, 1995.

Respondent Alfred Joseph Rashid's Statement of Answer was filed on or about March 15, 1996. Respondent Alfred Joseph Rashid's Submission Agreement was signed on March 14, 1996.

The NASD Regulation, Inc. Office of Dispute Resolution has no record of a Statement of Answer from respondents Morison Securities, Inc., Strommen & Associates, Strommen Financial Group, and Swenson Anderson Associates, Inc. The NASD Regulation, Inc. Office of Dispute Resolution has

no record of a properly executed submission to arbitration from respondents Morison Securities, Inc., Strommen & Associates, Strommen Financial Group, and Swenson Anderson Associates, Inc.

HEARING INFORMATION

The hearing was held on: October 1, 1996 for two (2) sessions;
 October 2, 1996 for two (2) sessions;
 October 3, 1996 for two (2) sessions; and
 October 4, 1996 for two (2) sessions.

The hearing was held in Minneapolis, Minnesota.

CASE SUMMARY

Claimant Scott McNairy ("Claimant") alleged that respondent Alfred Joseph Rashid (respondent "Rashid"), as broker and financial adviser through his employers, respondents Morison Securities, Inc., Strommen & Associates, Strommen Financial Group, and Swenson Anderson Associates, Inc., made misrepresentations and omissions of material facts. Claimant asserted that he informed respondent Rashid that he, Claimant, was risk averse. Claimant then asserted that respondent Rashid suggested various limited partnerships which were identified as investments that would provide for security of principal, that these investments were "not like other limited partnerships," were long term investments, and were not highly leveraged investments. Claimant stated that based upon these representations he invested \$15,000 in Freeman Diversified Real Estate II Limited Partnership in October of 1985, \$10,000 in Jason-Northco Properties Limited Partnership II in February of 1986, and \$5,000 in Public Storage Properties XVII in April of 1986. According to Claimant, he never informed respondent Rashid that he was interested in tax shelters, speculative investments, or investments that could result in loss of principal, rather the investment objectives he did describe were ignored in order to achieve higher commissions. Claimant asserted that respondent Rashid consistently reassured him when he inquired as to how the stocks were doing. Nonetheless, according to Claimant, he discovered in 1991 that there was no market for the Freeman Diversified Real Estate II Limited Partnership, he discovered in the fall of 1993 that the Jason-Northco Properties Limited Partnership II declined significantly in value, and he discovered in the fall of 1991 that a portion of his principal investment in the Public Storage Properties XVII would be lost.

Claimant made the following legal claims: (1) breach of contract; (2) violation of Minn. Stat. § 325F.68, et seq.; (3) common law fraud; (4) negligent misrepresentation / negligence; (5) breach of fiduciary duty against respondent Rashid; (6) common law rescission; and (7) liability under respondeat superior against respondents Morison Securities, Inc., Strommen & Associates, Strommen Financial Group, and Swenson Anderson Associates, Inc.

Respondent Rashid denied the allegations set forth in the Statement of Claim. Respondent Rashid stated that Claimant informed him that he requested a 15-18% return on his investment, that he was

dissatisfied with the conservative investment strategy he was previously in, and that he was interested in investing in a real estate component. Respondent Rashid contended that he never stated to Claimant that the partnerships were "secure" or "safe," that he informed Claimant of the possibility that principal may be lost, and that he ensured that Claimant received a prospectus on each of the partnerships in advance of Claimant's investment decision. Furthermore, Claimant was charged the same commissions on the partnerships at issue as he was for his investment in mutual funds, according to respondent Rashid. Respondent Rashid also stated that Claimant was regularly updated on the status of his investments. Respondent Rashid made the affirmative defense that Claimants claims are barred by the six-year statute of limitations.

RELIEF REQUESTED

Claimant Scott McNairy requested: an award in the amount of \$35,000 for compensatory damages resulting from losses; an award for twice the amount he paid in commissions; an award for market adjusted damages; an award allowing for rescission of the security purchases at issue; as award for punitive damages; an award for attorneys' fees pursuant to Minn. Stat. § 325F.68; an award for pre-judgment and post-judgment interest; and an award for refund of financial planning fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Strommen & Associates, Strommen Financial Group, and Swenson Anderson Associates, Inc. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration or a Statement of answer and are not required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure because they are not NASD members. The undersigned arbitrators have thus determined to dismiss respondents Strommen & Associates, Strommen Financial Group, and Swenson Anderson Associates, Inc. without prejudice.

Upon review of the file and the representations made by/on behalf of claimant Scott McNairy, the undersigned arbitrators have determined that respondent Morison Securities, Inc. has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure. The undersigned arbitrators have also determined that respondent Morison Securities, Inc. had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the NASD Code of Arbitration Procedure.

Respondent Morison Securities, Inc. did not file with NASD Regulation, Inc. Office of Dispute Resolution 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.

At hearing, respondent Alfred Joseph Rashid moved for dismissal. The undersigned arbitrators decided to deny this motion at that time.

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 NASD Regulation, Inc. 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 the Statement of Claim against respondents Alfred Joseph Rashid and Morison Securities, Inc. is denied and dismissed with prejudice; 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 \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were eight hearing sessions x \$400 = \$3,200 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, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Scott McNairy.

Claimant Scott McNairy is liable for and shall pay forum fees in the amount of \$2,670 (= \$3,200 total forum fees - \$400 hearing session deposit - \$130 overpayment).

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators:

/s/ Andrew Dick
Andrew R. Dick, Esquire
Public Arbitrator, Presiding Chair

Dated:

12/3/96

/s/ Arlen G. Restad
Arlen G. Restad
Public Arbitrator

November 5, 1996

/s/ Richard G. Behling
Richard G. Behling
Public Arbitrator

November 5, 1996