

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimants

Theresa, Gary & Deborah Heller

95-05382

Name of Respondents

VFS Securities
Douglas Fenning
All Financial Service

REPRESENTATION

For claimants Theresa, Gary & Deborah Heller ("claimants") appeared Howard Kurtzberg, Esq. with law offices located in Jericho, New York.

Respondent VFS Securities ("VFS") did not enter an appearance in this matter.

For respondents Douglas Fenning ("Fenning") and All Financial Service ("All Financial") appeared Howard E. Greenberg, Esq. with law offices located in Hauppauge, New York.

CASE INFORMATION

Statement of Claim was filed on November 9, 1995. Claimants' Submission Agreement was signed on November 8, 1995.

Joint Statement of Answer was filed by respondents Fenning and All Financial on May 2, 1996. Fenning's Submission Agreement was signed on May 6, 1996. All Financial did not file a Submission Agreement.

VFS did not file a Statement of Answer or a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: April 7, 1997 - Two Sessions

The hearings were held at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that Fenning, through All Financial and as a representative of VFS Securities, violated the "know your customer" rules of the NASD by recommending certain securities that were unsuitable to claimants' needs. Claimants alleged that the amount of \$133,524.09 was invested in two different funds, namely \$67,000.00 in the Datronic Equipment Income Fund XVIII, L.P. and the balance in an Oppenheimer Fund. Claimants further alleged that Theresa Heller, with limited education and minimal investment experience, was not told by Fenning that the investments were high risk. Claimants contended that Fenning failed to offer other investments, failed to perform due diligence, failed to provide a copy of offering material, guaranteed an 11% return for the Oppenheimer Fund and 12.5% return for the Datronic Fund, failed to provide information about the value of Datronic Fund, received a commission in excess of commissions received for other investments, advised Theresa Heller to hold onto investments when information about problems with Datronic Fund arose, advised that the entire principal investments in the Datronic Fund of \$67,000 were secure and would be returned in a period of five years. Claimants further contended that Theresa Heller developed a ten year relationship of trust and confidence in Fenning, but she would not have invested in these funds on behalf of herself and Gary Heller and Deborah Heller, her two children, had Fenning disclosed that the securities were high risk. Claimants also asserted that the distributions received from the Datronic Fund were a return of principal and not interest.

Respondents Fenning and All Financial maintained that, through All Financial Services, Fenning had a long standing professional relationship with Theresa Heller and provided tax and insurance services to her and her family since 1980. Fenning and All Financial further maintained that, in late 1989, Theresa Heller approached Fenning and requested assistance because an investment that she had made a year earlier of approximately \$133,000.00 was not performing in accordance with her needs at the time. Fenning and All Financial contended that Fenning interviewed Theresa Heller and discovered that the \$133,000.00 was invested in a tax free fund with John Hancock and was earning less than 4% interest per year. Fenning and All Financial further contended that Theresa Heller required income of at least \$700.00 to \$1,000.00 a month for the monies and, since interest rates on Certificates of Deposit were in the 3-4% range, a different type of investment was needed in the 8-11% range so that amount could be withdrawn or paid monthly. Fenning and All Financial alleged that Theresa Heller owned her own home, with equity of over \$120,000.00 and she earned approximately \$10,000.00 annually and lived with her two grown children, who contributed a minimal amount to the household income due to partial disabilities.

Fenning and All Financial maintained that Fenning was able, at Theresa Heller's insistence, to withdraw the funds from John Hancock and for six weeks he investigated what investment would meet Theresa Heller's requirements for monthly income. Fenning and All Financial further maintained that Fenning suggested two separate investments, \$66,000.00 in Oppenheimer Strategic Investment Fund and \$67,000.00 in Datronic Equipment Fund XVIII and that these selections were made after reviewing Theresa Heller's situation and with her full knowledge and consent. Fenning and All Financial contended that all of the appropriate and required paperwork was filed out and the purchases were made and accepted in early 1990. Fenning and All Financial further contended that no assurances were provided to Theresa Heller about the

investments other than that Fenning felt that the Oppenheimer account would most likely provide a return in the range of 8-9% and the Datronic investment a bit higher. Fenning and All Financial maintained that these recommendations were based upon Fenning's review of the history of the Oppenheimer Funds as well as a review of the performance of the previous seventeen Datronic Funds.

Fenning and All Financial maintained that the Oppenheimer Fund grew at a rate of 10% and was liquidated by Theresa Heller in 1994 in the amount of \$96,000.00. Fenning and All Financial also alleged that Theresa Heller then opened an account at Smith Barney in Atlanta and permitted her broker to trade stocks, in his own discretion, in her account. Fenning and All Financial also maintained that the Datronic Fund paid Theresa Heller at the rate of 11% for about three years and then due to internal difficulties at the company, all payments ceased in mid 1996. Fenning and All Financial contended that the total payments received were approximately \$43,000.00 and that Theresa Heller was a member of a class action suit against the Fund and certain individuals and ultimately could benefit in that action.

Fenning and All Financial raised the defenses of laches, statute of limitations, contributory conduct and election of remedies. Fenning and All Financial also objected to the allowance of the claims to proceed to arbitration.

RELIEF REQUESTED

Claimant requested return of their \$67,000.00 principal, interest and for such other relief as is appropriate.

Douglas Fenning and All Financial Service requested that the Claimants' claims be dismissed and for such other relief as is appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

The panel has determined that VFS Securities was not served with the Statement of Claim in this matter in accordance with Rule 10314(a) of the Code of Arbitration Procedure and, therefore, the panel has dismissed all claims against VFS Securities without prejudice.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Fenning and All Financial be and hereby are jointly and severally liable and shall pay to claimants the sum of \$29,000.00.

2. The arbitration panel hereby assigns to respondents Fenning and All Financial any and all monetary awards up to \$29,000.00 from litigation pending against Datronic Equipment Income Fund XVIII received by claimants. Payment of any monies received by claimants to the limit expressed above shall be made to respondents Fenning and All Financial within thirty calendar days of receipt of said monies by claimants from the pending litigation. Counsel for claimants shall notify respondents and provide a copy of the decision in the pending matter.
3. All other claims are dismissed in their entirety.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$150.00 non-refundable filing fee previously deposited by the claimant and have assessed the following forum fees:

2 hearing sessions x \$500.00 = \$1,000.00

Forum fees assessed against:

1. Claimants be and hereby are liable for the sum of \$500.00, representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$500.00 with NASD Regulation, Inc. and, therefore, claimants owe nothing by way of forum fees.
2. Respondents Fenning and All Financial be and hereby are jointly and severally liable for and shall pay to NASD Regulation, Inc. the sum of \$500.00, representing one-half of the total amount of forum fees assessed.

Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures

Fred S. Pieroni

Fred S. Pieroni
Chairperson-Public Arbitrator

George V. Cornell, III, Esq.
Public Arbitrator

Vicki Z. Holleman, Esq.
Industry Arbitrator

Date of decision: July 24, 1997

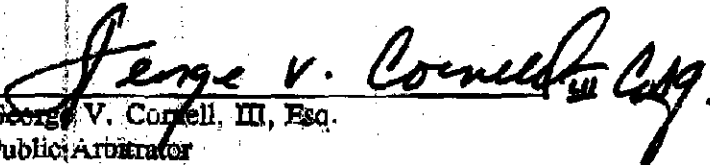
I, Fred S. Pieroni, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Fred S. Pieroni

Fred S. Pieroni

Arbitrators' Signatures

Fred S. Pieroni
Chairperson-Public Arbitrator

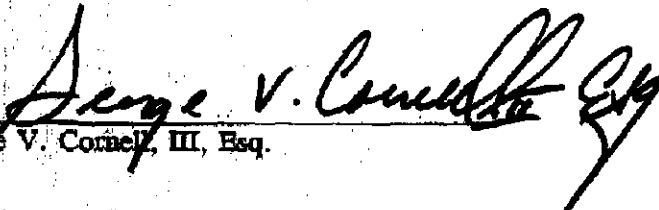


George V. Cornell, III, Esq.
Public Arbitrator

Vicki Z. Holleman, Esq.
Industry Arbitrator

Date of decision: July 24, 1997

I, George V. Cornell, III, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



George V. Cornell, III, Esq.

Arbitrators' Signatures

Fred S. Pieroni
Chairperson-Public Arbitrator

George V. Cornell, III, Esq.
Public Arbitrator

Vicki Z. Holleman
Vicki Z. Holleman, Esq.
Industry Arbitrator

Date of decision: July 24, 1997

I, Vicki Z. Holleman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Vicki Z. Holleman
Vicki Z. Holleman, Esq.