

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Maxine St. Onge,

Claimant,

and

No. 95-06003

Harry W. Wilk, III,

Respondent.

REPRESENTATION OF PARTIES

Claimant Maxine St. Onge was represented by Donald M. Feferman, Esquire, of Corpus Cristi, Texas.

Respondent Harry W. Wilk, III was represented pro se.

CASE INFORMATION

Claimant Maxine St. Onge's Statement of Claim was filed on or about December 26, 1995.

Claimant Maxine St. Onge's Submission Agreement was signed on September 4, 1996.

Respondent Harry W. Wilk, III's Statement of Answer and Counterclaim was filed on or about February 16, 1996.

Respondent Harry W. Wilk, III's Submission Agreement was signed on September 4, 1996.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on May 6, 1997 for two (2) sessions.

The hearing was held in Houston, Texas.

CASE SUMMARY

Claimant Maxine St. Onge ("Claimant") brought this action to recover losses allegedly resulting from unsuitable investments made on her behalf by Respondent Harry W. Wilk, III ("Respondent"), while he was registered representative of Bluebonnet Securities, Inc. and IC Brokerage, Inc.

Claimant alleged that she totally relied on the professional financial advice of Respondent and that the securities he recommended and sold to her were totally unsuitable for the level of risk to which her retirement funds should have been exposed. Claimant asserted that these investments were totally inappropriate because she was a retired widow who could have been in need of cash at any time because of her age and lack of earning capacity. According to Claimant, she was unable to convert these investments to cash on any reasonable basis and there was essentially no resale market for the investments. Claimant stated that the investments for which she had access, to characterize the investments, were high risk and non-liquid.

Claimant asserted the following legal claims: (1) violation of Title 3, § 27.01 of the Texas Business and Commerce Code - Fraud in the Sale of Stock and Real Estate; (2) violation of § 33 of the Texas Securities Act; (3) violation of Securities Act of 1933, 15 U.S.C. §§ 77a-77aa; (4) violation of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78dd; (5) violation of Title 2, §§ 17.41 et. seq. of the Texas Business and Commerce Code, Texas Deceptive Trade Practices - Consumer Protection Act; (6) breach of fiduciary duties; (7) negligence; and (8) breach of Contract.

Respondent denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on his part. Respondent stated that he did not control any of Claimant's investments, Claimant was not so unsophisticated of an investor as she made herself out to be, she was not completely dependent on Respondent's advice, and she did not rely on Respondent's advice. Respondent contended that a substantial portion of Claimant's investments continued to perform in line with Claimant's investment objectives. Respondent argued that the Statement of Claim failed to specifically establish a good faith factual basis for any violation of any statute.

Respondent argued in its counterclaim that Claimant had not established a factual basis to assert any claims hereunder and her failure to do so constituted bad faith. Respondent asserted that none of Claimant's claims, if true, would constitute a violation of any referenced statutes and her Statement of Claim represented extortion.

RELIEF REQUESTED

Claimant Maxine St. Onge requested an award for: rescission of the investments made on her behalf by Respondent Harry W. Wilk, III; legal fees in the amount of \$4,850 and filing fees and hearing session deposit fees in the amount of \$950; and punitive damages pursuant to the laws of the State of Texas.

Respondent Harry W. Wilk, III requested that the claims asserted against him be dismissed in their entirety and that it be awarded his costs and attorneys' fees incurred in this matter.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant Maxine St. Onge named IC Brokerage, Inc., a non-member, as a Respondent in this action. However, IC Brokerage, Inc. is not compelled by the Rules of the NASD to arbitrate disputes in this forum and submitted a letter dated May 17, 1996 declining to participate voluntarily in this arbitration before the NASD Regulation, Inc. Office of Dispute Resolution. Thus, IC Brokerage was removed as a party and this action proceeded without the participation of IC Brokerage, Inc.

Claimant Maxine St. Onge also named Bluebonnet Securities, Inc. as a Respondent in this action. Pursuant to bankruptcy proceedings of Bluebonnet Securities, Inc., all action against said party was stayed and this action proceeded against Respondent Harry W. Wilk, III only.

At the hearing in his matter, Claimant Maxine St. Onge moved to exclude a document containing damage calculation that was not furnished prior to the hearing. The undersigned panel of arbitrators granted this motion.

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 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 Respondent Harry W. Wilk, III is liable for and shall pay Claimant Maxine St.

Onge compensatory damages in the amount of \$30,000;

2. That Respondent Harry W. Wilk, III is liable for and shall pay Claimant Maxine St. Onge attorneys' fees, based on Texas State law and parties briefs, in the amount of \$3,000;
3. That Respondent Harry W. Wilk, III is liable for and shall pay Claimant Maxine St. Onge costs in the amount of \$303; and
4. 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, if any. There were no pre-hearing conferences and there were two (2) hearing sessions x \$750 = \$1,500 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (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 § 10322(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution 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 Regulation, Inc. Office of Dispute Resolution by Maxine St. Onge.

Pursuant to § 10333 of the Code, Bluebonnet Securities, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge in the amount of \$350 previously submitted by Respondent Bluebonnet Securities, Inc.

Pursuant to § 10319 of the Code, Harry S. Wilk, III is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the postponement fee in the amount of \$750.

Pursuant to § 10322(c) of the Code, Harry S. Wilk, III is also liable for and shall the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$750. Harry S. Wilk, III is liable for and shall pay to Maxine St. Onge the amount of \$750 as reimbursement of the hearing session deposit.

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

Concurring Arbitrators' Signatures

David G. Beerbower, Esquire
David G. Beerbower, Esquire
Chairperson
Public Arbitrator

June 2, 1997
Dated:

George L. Robertson, Esquire
George L. Robertson, Esquire
Panelist
Public Arbitrator

June 2, 1997
Dated:

Charles E. Martin, CPA
Charles E. Martin, CPA
Panelist
Industry Arbitrator

June 3, 1997
Dated:

For NASD use only:
Date Award was served on the parties: June 10, 1997