

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

June V. Hutchison, Individually and As
Personal Representative and Beneficiary of the
Estate of Daniel D. Hutchison

96-00059

Name of Respondent

Buckhead Financial Corporation

REPRESENTATION

For Claimant June V. Hutchison Individually and as Personal Representative and Beneficiary of the Estate of Daniel D. Hutchison ("J. Hutchison" and "D. Hutchison"): Kalju Nekvasil, Esq. of Goodman & Nekvasil, P.A., Safety Harbor, FL.

For Respondent: Gregory R. Crochet, Esq. of Kutak Rock, Atlanta, GA.

CASE INFORMATION

Statement of Claim filed: January 3, 1996.

Amended Statement of Claim filed: January 6, 1997.

Claimant's Submission Agreement signed on: December 13, 1995 by June V. Hutchison, Individually and as Personal Representative and Beneficiary of the Estate of Daniel D. Hutchison.

Statement of Answer filed by Respondent on: March 25, 1996.

Respondent failed to submit an executed Submission Agreement as required by Rules 10301 and 10314 of the Code of Arbitration Procedure ("Code").

HEARING INFORMATION

On January 22, 1997 a hearing lasting one session was conducted in Tampa, FL.

CASE SUMMARY

Claimant, an elderly widow, alleged that Respondent improperly recommended that Claimant

and her husband, D. Hutchison, invest \$112,900 in a high-risk, long-term limited partnership in their IRA accounts, namely, Preferred Income Fund III L.P. Claimant alleged that these recommendations constituted approximately 68% of J. Hutchison's IRA account, that Respondent knew that D. Hutchison had advanced Alzheimer's disease at the time of the limited partnership transaction in his IRA account, that these recommendations were unsuitable, that Respondent made false representations to Claimant in connection with these recommendations, and that Respondent failed to disclose certain material facts to Claimant concerning this investment and the disciplinary history of the account executive who recommended this investment to Claimant. Claimant further alleged that Respondent failed to properly supervise their account executive, failed to establish proper supervisory measures, and failed to comply with supervisory procedures that were actually implemented. Claimant further alleged that Respondent's actions constituted breach of contract, common law fraud, breach of fiduciary duty, gross negligence and unjust enrichment. Claimant also filed an Amended Statement of Claim alleging that Respondent violated the Florida Securities Act.

Respondent denied each and every allegation of wrongdoing contained in the Statement of Claim. Respondent alleged the following: they did not maintain Claimant's account; they did not have the duty to conduct due diligence and were not in a fiduciary relationship with J. Hutchison or D. Hutchison; that the investment was suitable at the time that it was recommended and was in all respects appropriately presented by the Claimant's account executive; that any losses or damages claimed by Claimant was a result of a slump in the real estate market or conduct on the part of Preferred Income Fund III and its principals, not the Respondent. Further, Respondent asserted the following defenses: waiver; ratification; assumption of risk; lack of a private right of action for violations of self-regulatory organization rules; failure to establish the elements of a suitability claim; that the projections made in the prospectus were couched in sufficiently cautionary language and were not actionable, that Claimant's reliance, if any, on oral statements were contradicted by numerous cautionary statements and disclosures in the prospectus; statute of limitations and laches; statute of frauds; res judicata; collateral estoppel; and, the economic loss rule.

RELIEF REQUESTED

Claimant June V. Hutchison requested actual damages of \$105,000.00, benefit of the bargain damages and lost opportunity damages and pre-judgment interest and rescission interest under the Florida Securities Act in the amount of \$70,000.00, attorney's fees and costs, punitive damages, and such other relief as is deemed proper and necessary.

At the hearing the Estate of Daniel D. Hutchison requested actual damages of \$10,000.00, benefit of the bargain damages and lost opportunity damages and pre-judgment interest and rescission interest under the Florida Securities Act in the amount of \$5,000.00, attorney's fees and costs, punitive damages, and such other relief as is deemed proper and necessary.

Respondent requested a dismissal of the claim and that it be awarded its litigation expenses,

costs and fees.

OTHER ISSUES CONSIDERED & DECIDED

Pursuant to Rule 10101 of the Code, the arbitration panel found subject matter jurisdiction over this entire controversy.

The arbitration panel further found that the Respondent was a member of the NASD at the time the controversy arose. Consequently, the arbitration panel found personal jurisdiction over the Respondent, pursuant to Rule 10301 of the Code.

In view of the above, the arbitration panel found that the Respondent was required to file a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard the arbitration panel found that the Statement of Claim was properly served upon the Respondent pursuant to Rule 10314(a) of the Code.

In addition, in accordance with Sections 10310, 10315, and 10318 of the Code, the arbitration panel found that the NASD provided Respondent with due notice of the hearing conducted in this matter by regular and certified mail. Respondent, in correspondence dated December 31, 1996, notified the NASD of its intention to negotiate non-bankruptcy settlements with its creditors and that due to lack of resources it would not be able to appear or respond to the referenced arbitration claims which included this claim. The arbitration panel determined to proceed with the hearing without Respondent whose absence was unexcused.

Respondent's Requests to Dismiss were denied. The arbitration panel specifically found that the Preferred Income III Class Action did not bar these claims and that J. Hutchison had standing to arbitrate the claims of her husband, D. Hutchison.

Claimant's Motion to Amend Statement of Claim was granted.

The Award in this matter may be executed in counterpart copies. The parties will 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 post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Buckhead is found liable and shall pay to Claimant June V. Hutchison actual damages in the amount of \$105,000.00.
2. Respondent Buckhead is also found liable and shall pay to Claimant June V. Hutchison

the benefit of the bargain damages and lost opportunity damages and pre-judgment interest and rescission interest under the Florida Securities Act in the amount of \$70,000.00.

3. Respondent Buckhead is also found liable and shall pay to the Estate of Daniel D. Hutchison actual damages in the amount of \$10,000.00.
4. The Estate of David D. Hutchison's request for benefit of the bargain damages and lost opportunity damages and pre-judgment interest and rescission interest under the Florida Securities Act in the amount of \$5,000.00 is denied.
5. June V. Hutchison Individually and as Personal Representative and Beneficiary of the Estate of Daniel D. Hutchison's requests for attorney's fees, costs, and punitive damages are hereby denied.
6. The Panel specifically finds that Respondent Buckhead violated the Florida Securities Act in handling June V. Hutchison's IRA account and Daniel D. Hutchison's IRA account as alleged in the Amended Statement of Claim.
7. Respondent's requests for an award of its litigation expenses, costs and fees are hereby denied.
8. Respondent Buckhead shall pay to the Claimant the sum of \$750.00 representing reimbursement of the hearing session deposit previously paid by the Claimant to the NASD.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$750.00 (1 session x \$750.00).

1. The NASD shall retain both the hearing session deposit of \$750.00 and the non-refundable filing fee of \$200.00 previously paid by the Claimant.
2. Respondent Buckhead is still owing \$350.00 pursuant to Rule 10333 of the Code for the previously assessed member surcharge.

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

NASD Case Number 96-00859

Award

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Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Public

R. Andrew Duncan, Esq.

/s/

Industry

Warren A. Forest.

/s/

Public

Paul E. Flora

February 21, 1997

Date of Decision: _____