

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Lucille Freeman,

Claimant,

and

No. 96-00116

Financial Network Investment Corp.,

Respondent and Cross-Claimant,

and

James Clark Selby and Joe Dwayne Baugus,

Respondents and Cross-Respondents.

REPRESENTATION OF PARTIES

Claimant, Mrs. Lucille Freeman ("Mrs. Freeman"), was represented in pleadings by Ms. Paula Hutchinson, Esquire of McDade & Fogler LLP, located in Houston, Texas, but was not represented at the hearing in this matter pursuant to a settlement agreement.

Respondent and Cross-Claimant, Financial Network Investment Corporation ("Financial"), was represented by Mr. Samuel Y. Edgerton, III, Esquire of Nash & Edgerton, located in Hermosa Beach, California and Marc A. Sheiness, Esquire of Hirsch, Robinson, Sheiness & Glover located in Houston, Texas.

Respondent and Cross-Respondent, Mr. James Clark Selby ("Mr. Selby"), was represented initially in correspondence by Mr. Robert S. Addison, Esquire of Storey Armstrong Steger & Martin, P.C., located in Dallas, Texas, who later withdrew, and Mr. Selby was not represented at the hearing in this matter.

Respondent and Cross-Respondent, Mr. Joe Dwayne Baugus ("Mr. Baugus"), was not represented in this matter.

CASE INFORMATION

Mrs. Freeman's Statement of Claim was filed on or about January 10, 1996.

Mrs. Freeman's Submission Agreement was signed on December 27, 1995.

Financial's Statement of Answer and Cross-claim was filed on or about April 4, 1996.

Financial's Submission Agreement was signed on February 1, 1996 by Thomas A. Wiltrakis, Sr. Vice President, General Counsel of Financial Network Investment Corporation.

Neither Mr. Selby nor Mr. Baugus submitted a Statement of Answer or a properly executed submission agreement.

HEARING INFORMATION

A pre-hearing conference was held on April 15, 1997 for one (1) session.

The hearing was held on June 17, 1997 for one (1) session.

The hearing was held in Dallas, Texas.

CASE SUMMARY

Mrs. Freeman alleged that she lost her investment of \$50,000 in IBS Equity, Incorporated ("IBS"), which was solicited by Mr. Baugus, her agent at Financial, in the fall of 1992. According to Mrs. Freeman, Mr. Baugus was in business with IBS and its president, Mr. Selby. Mrs. Freeman asserted that: she was presented with no prospectus or other financial information about IBS, nor was she allowed access to such information; she had no evidence of ownership in IBS from the time of her investment in 1992 until August 1993, at which time she was issued 5,000 shares of capital stock with a par value of \$1.00 per share; no information was given regarding the value of her stock, the number of stockholders, or any other details about her investment; transfer of the stock was restricted, despite the fact that Mrs. Freeman was never advised of any restriction prior to her investment, and did not agree to any restrictions; and the corporation's charter was forfeited in July 1994 for failure to pay franchise taxes. Mrs. Freeman stated that she did not realize that her investment had been lost until October 1994. Mrs. Freeman asserted the following causes of action: (1) violation of the Texas Securities Act, TEX. REV. CIV. STAT. ARTS. 581-7, 581-33 A(1), 581-33 A(2), and 581-33 F; (2) violation of the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. C. § 17.41, ET SEQ.; (3) statutory fraud; (4) common law fraud; (5) negligent misrepresentation; (6) multiple damages; and (7) entitlement to attorney fees pursuant to TEX. REV. CIV. STAT. ARTS. 581-33 D and the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. C. § 17.50.

Financial denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on its part. Financial stated that IBS was not an approved security of Financial and that Mrs. Freeman knowingly dealt with Mr. Baugus in a separate capacity when she invested with IBS. Financial contended that the sale of interest in IBS to Mrs. Freeman was a private matter between Mrs. Freeman, Mr. Baugus, and others for which Financial had no knowledge of and could not supervise. Financial also asserted various affirmative defenses.

Financial alleged that Messrs Selby and Baugus are liable for damages caused by their deceit with the intent to deprive Financial of property or legal rights or otherwise cause injury. Financial asserted that Mr. Baugus breached his signed written agreement with Financial wherein he agreed only to sell securities approved by Financial. Financial asserted that as a proximate result of Mr. Baugus' sale of the IBS investment to Mrs. Freeman, which was not approved by Financial, it has been damaged. Financial's causes of action included the following: fraud; breach of fiduciary duty; violation of Art. III §§ 42 and/or 43 of the NASD Rules of Fair Practice; breach of contract; and right to reimbursement and compensation for all attorneys' fees and other costs of litigation incurred by Financial in this action.

RELIEF REQUESTED

Financial requested an award for: damages of at least \$150,000; interest at the maximum legal rate; punitive damages; and attorneys fees, forum fees, arbitration and costs of litigation incurred in or related to this action.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of Financial the undersigned arbitrators have determined that Messrs. Selby and Baugus have been properly served with the Cross-claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Messrs. Selby and Baugus had received due notice of the hearing as required under § 10318 of the Code.

Messrs. Selby and Baugus did not file with NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration, but are required to submit to arbitration pursuant to § 10301 of the Code and are bound by the determination of the arbitration panel on all issues submitted.

This matter was originally filed in the District Court of Harris County, Texas. On November 9, 1995 this court ordered the matter referred to arbitration pursuant to the Code.

Financial filed a Motion to Dismiss. After considering this motion, all responses thereto, and the oral arguments via the telephonic pre-hearing conference, the panel of arbitrators denied this motion.

Mr. Selby filed a Motion to Dismiss. This motion was denied by the panel of arbitrators after the pre-hearing conference. Subsequently, Mr. Selby moved for reconsideration, which was denied by the panel of arbitrators.

On June 13, 1997 Mrs. Freeman settled all claims against Financial. Therefore, this matter went to arbitration and was heard solely on the cross-claims of Financial against Messrs. Selby and Baugus.

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. Messrs. James Clark Selby and Joe Dwayne Baugus are jointly and severally liable for and shall pay Financial Network Investment Corporation compensatory damages of \$44,500;
2. Messrs. James Clark Selby and Joe Dwayne Baugus are jointly and severally liable for and shall pay Financial Network Investment Corporation attorneys' fees of \$38,000 pursuant to Texas law;
3. 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 was one (1) pre-hearing conference x \$300 and there was one (1) hearing session x \$750 = \$1,050 in forum fees. Pursuant to § 10205(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 § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$200 and, pursuant to § 10332(f), shall retain as forum fees

the hearing session deposit of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Mrs. Freeman.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge of \$350 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Financial by Financial.

Pursuant to § 10205, Financial is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the non-refundable filing fee of \$500.

Messrs. Joe Dwayne Baugus and James Clark Selby are jointly and severally liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees of \$300 (= \$1,050 total forum fees - \$750 hearing session deposit paid by Mrs. Freeman).

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

Concurring Arbitrators' Signatures

/s/ David G. Beerbower

August 20, 1997

David G. Beerbower, Esquire
Chairperson
Public Arbitrator

Dated:

/s/ Ann Blaess Kimball

August 21, 1997

Ann Blaess Kimball, Esquire
Panelist
Public Arbitrator

Dated:

/s/ Kurt L. Smith

August 20, 1997

Kurt L. Smith
Panelist
Industry Arbitrator

Dated:

For NASD use only:

Date Award was served on the parties: _____