

NOA D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Janice K. Nigh Ward, as successor trustee
under the Mary N. Haller Trust LP, dated 8/2/89

96-00740

Name of Respondent's

Stanley Gifford
Birchtree Financial Services, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 16, 1996, Claimant Janice K. Nigh Ward ("Claimant"), acting as successor trustee under the Mary N. Haller Trust and appearing through her representative and counsel Jane L. Stafford, Esq. of Watson and Marshall L.L.C., Kansas City, Missouri, alleged that Respondents Birchtree Financial Services, Inc. ("BFS") and Stanley D. Gifford ("Gifford") wrongly converted funds intended for stock purchases. Claimant further alleged that Mary N. Haller ("Haller"), an elderly woman, on approximately September 24, 1993, opened an account for investment savings with Birchtree Financial Services, Inc. through Gifford, a registered representative of that firm. Claimant contended that she had an investing relationship with Gifford and that she wrote him a series of checks totalling \$15,500.00 to be used to purchase stocks for Haller's account. Claimant further contended that Haller indicated that the checks would be used to purchase stocks by noting on the memo line of the first check "to buy stocks." Claimant asserted that Respondent acquired stocks on margin aggregating \$21,158.80 in Haller's account. Claimant further asserted Haller did not intend that these securities be acquired on margin but from the proceeds of the checks written to Gifford. Claimant alleged that instead of using the funds as intended, Gifford converted these funds to his own personal use and benefit. Claimant further alleged that the Settlement Agreement and Mutual Release entered into by Haller and Gifford was null and void as Gifford failed to repay the funds owed to Haller. Claimant contended that due to the wrongdoing of the Respondent, she has suffered damages for which the Respondent should be held liable.

Respondent Stanley Gifford, who appeared Pro Se, maintained that all checks referred to in the Statement of Claim were personal loans from Haller, and that Haller did not intend to purchase stocks with the

\$15,000 in question. Respondent further maintained that he invested funds for Haller for over 20 years, including the use of a margin account, and was never the subject of a securities related complaint. Respondent also maintained that upon her opening her account at BFS, she was not given the opportunity to determine the current status of her prior investments. Respondent contended that Haller purchased \$10,000.00 of Lord Abbott Tax Free Income Fund-Missouri after opening her account at BFS. Respondent further contended that Haller kept a detailed ledger describing all of her transactions with him, including the loans, which can be verified by transcribing a taped telephone conversation he had with Haller. Respondent also contended that Haller had a promissory note and mutual release drawn up further supporting that the money in question was a loan. Respondent asserted that Haller's notation "to buy stocks" on the check was written merely to reflect that he was going to use the money to buy stocks in his personal account. Respondent further asserted that he was not given adequate opportunity to make payments on the promissory note before a "cure letter" was sent to his employment address. Respondent also asserted that BFS learned of the content of the letter, in violation of public disclosure clause in their agreement, and therefore terminated his employment. Respondent maintained that as a result of the above, he should not be held liable.

Respondent Birchtree did not file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Janice K. Ward requested \$10,000.00 in actual damages. Claimant also requested interest on all damages awarded equal at a minimum of \$2,976.00 plus such additional awards through the date of payment of the award and as allowed by statute. Claimant requested costs and attorneys' fees in the amount of \$1,650.00. Claimant also requested punitive damages, sufficient to punish respondents. Claimant further requested an award of all costs, disbursements, expenses and such other relief as shall be deemed just and equitable.

Respondent Stanley D. Gifford requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert A. Babcock, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Janice K. Nigh Ward on March 14, 1996, and by Respondent Stanley Gifford on May 11, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Janice K. Nigh Ward, successor trustee under the Mary N. Haller Trust against Respondent Stanley Gifford are dismissed in their entirety.
2. The parties shall bear their respective costs.

3. The \$150,000.00 sum of money deposited with the National Association of Arbitrators for the use of the Claimant, shall be retained by the Claimant.
4. All other relief requests are denied.
5. The Claimant certifies (AKA) that the dispute with Respondent Birchtree Home Care, Inc. was settled prior to the determination on the merits.

VERIFICATION

I, **ROBERT A. BABCOCK, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: October 8, 1997