

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Names of Claimants

Edgar H. and Virginia P. Bedwell as Trustees for the
Bedwell Family Revocable Trust
Edgar H. and Virginia P. Bedwell as Trustees for the
Betty B. Fredericks Trust
and/or Edgar H. Bedwell as Personal Representative for
the Estate of Betty B. Fredericks

96-00757

Names of Respondents

J.W. Charles Securities, Inc.
Frederick J. Shapiro

REPRESENTATION

For Claimants: Adam Doner, Esq. of Davis, Gordon & Doner, P.A., West Palm Beach, Florida.

For Respondents: Howard A. Tescher, Esq. of Kipnis Tescher Lippman Valinsky & Kain, Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed: February 13, 1996.

Claimants' Submission Agreements signed: February 13, 1996 by Edgar H. and Virginia P. Bedwell on behalf of the Trusts and March 24, 1997 by Edgar H. Bedwell as the Personal Representative of the Betty B. Fredericks Estate.

Joint Statement of Answer filed by Respondents: July 25, 1996.

Respondent JWC's Submission Agreement/Corporate Acknowledgment signed: May 16, 1996 by Charles Scarlett on behalf of JWC.

Respondent Shapiro's Submission Agreement signed: May 14, 1996.

HEARING INFORMATION

A pre-hearing telephonic conference lasting one (1) session was conducted on March 19, 1997 with the Chairperson of the arbitration panel.

On March 24, 1997 and March 25, 1997 hearings lasting four (4) sessions were conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Edgar and Virginia Bedwell as Trustees of the Bedwell Family Revocable Trust and the Betty B. Fredericks Trust alleged that Betty B. Fredericks was a seventy six (76) year old widow and that the Trusts were sold a limited partnership in the amount of \$174,000.00 by Respondents; that the partnership was a high-risk office equipment leasing limited partnership; that Respondents promised that the partnership would pay 11.5% per annum with a return of the entire principal within five (5) years from the close of the partnership which was December 31, 1995; that the partnership only paid back 66% of the principal and that Mrs. Fredericks, who is now deceased, sustained a loss of more than \$100,000.00 of interest pursuant to Florida Statute 517; that the broker misrepresented the investment and that JWC is liable for the losses, for failure to supervise Shapiro and for negligently permitting Shapiro to sell the unsuitable product to Claimants.

Respondents alleged that the purchase by the Claimants of Gemini Income Fund ("GIF") was suitable and met the Trusts' investment objectives. Respondents asserted the following affirmative defenses: waiver; estoppel; good faith; that all conduct was in accordance with the applicable rules and regulations; that Mrs. Fredericks was a sophisticated investor; that the claims failed to establish any connection between the alleged acts of the Respondents and the alleged injury to Claimants; that the Claimants' alleged losses resulted from Claimants' own investment decisions; that Respondents cannot be held responsible for the decline in the value of the securities; that Claimants failed to state a cause of action; and, that Claimants failed to mitigate their damages, if any.

RELIEF REQUESTED

Claimants requested an award against Respondents, jointly and severally, for actual damages in excess of \$158,686.00 for Respondents' unsuitable investment activities, for violation of Chapters 517 and 895, Florida Statutes, and, for loss of interest and income from the limited partnership investment. Claimants further requested costs, expenses and disbursements, including reasonable attorneys' fees and expert witness fees, and, for such other relief as is just and proper.

Respondents requested dismissal of all claims against them.

OTHER ISSUES CONSIDERED & DECIDED

1. At the hearing Respondents made a Motion to Dismiss for Lack of Standing or Capacity to Sue. In response to the Motion, the Claimants agreed to add Edgar H. Bedwell as personal representative of the Estate of Betty B. Fredericks as a Claimant and the panel agreed to proceed in that manner.

2. At the conclusion of the Claimants' case, the Respondents moved to dismiss Claimants' Section 517.301, Florida Statutes and RICO Act claims (both Florida and federal). In response to the Motion, the Claimants agreed that their Florida and federal RICO Act claims should be dismissed. The panel accordingly dismissed those claims. The panel, however, denied Respondents' Motion to Dismiss the Section 517.301 claims.
3. All parties requested that the panel determine entitlement with respect to attorneys' fees.
4. 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 NASD Regulation, Inc.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents JWC and Shapiro are found liable, jointly and severally, and shall pay to the Claimants, collectively, the sum of \$46,000.00.
2. Claimants' requests for damages against Respondents for violations of Chapter 517 and 895, Florida Statutes and for loss of interest and income from the limited partnership investment are denied.
3. Claimants' requests for costs, expenses and disbursements, including attorneys' fees and expert witness fees are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure ("Code"), the panel has assessed forum fees in the amount of \$3,300.00 (four (4) hearing sessions X \$750.00 + one (1) pre-hearing conference X \$300.00).

1. Respondents JWC and Shapiro are assessed forum fees, jointly and severally, in the amount of \$2,550.00 payable to NASD Regulation, Inc.
2. Claimants are assessed, jointly and severally, forum fees in the amount of \$750.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by Claimants in full satisfaction thereof.
3. NASD Regulation, Inc. shall retain the \$200.00 claim filing fee paid by the Claimants.

4. Pursuant to Rule 10333 of the Code, Respondent JWC shall pay to NASD Regulation, Inc. the \$350.00 past due member surcharge, which was previously invoiced.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Irene L. Lapidus, Esq.

Public/Chairperson

/s/

Alan B. Goldstein, Esq.

Public/Panelist

/s/

David C. Lockhart

Industry/Panelist

Date of Decision: May 23, 1997