

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Susan M. Saks

96-00877

Name of Respondent

Wheat First Securities, Inc.  
James F. Hargreaves

REPRESENTATION

Claimant Susan M. Saks ("Claimant") was represented by Jonathan G. Babyak, Esq., Bassi & Associates, Charleroi, PA.

Respondents Wheat First Securities, Inc. ("Wheat First") and James F. Hargreaves ("Hargreaves") were represented by Mark J. Krudys, Esq., LeClair Ryan, Richmond, VA.

CASE INFORMATION

The Statement of Claim was filed on February 23, 1996.  
Claimant's Submission Agreement was signed on March 21, 1996.

The Joint Statement of Answer was filed by Wheat First and Hargreaves (collectively "Respondents") on May 9, 1996.

Wheat First's Submission Agreement was signed on May 9, 1996.

Hargreaves' Submission Agreement was signed on May 8, 1996.

HEARING INFORMATION

Hearing Date/Sessions: February 26, 1997/two sessions

Hearing Location: Westin Penn Hotel  
Pittsburgh, PA

CASE SUMMARY

Claimant alleged, among other things, that Respondents induced Claimant to authorize unsuitable investments. Claimant alleged that originally the account belonged to Claimant's mother, Mrs. Miller, and it was then changed to a joint account. At the time of Mrs. Miller's death in 1994 Claimant became the surviving joint tenant. Claimant alleged that Respondents knew that Mrs. Miller was eighty years old and in poor health and that the investment objectives were liquidity, security of principal and income to assist with Mrs. Miller's health care needs. Claimant alleged that at the time the account was established, the investments were liquid and generating sufficient income for Mrs. Miller's needs.

Claimant alleged that commencing in 1991 and continuing throughout 1992 and 1993, Hargreaves began purchasing unsuitable investments including, but not limited to Commonwealth Equipment Fund VII, Commonwealth Equipment Fund VIII, Krupp Government Income Fund, PLM Equipment Growth Fund V and PLM Equipment Growth Fund VII. Claimant alleged that the \$190,000.00 in these limited partnerships alone was in excess of forty percent (40%) of Claimant's portfolio. Claimant alleged that as a result of these poor investments, the income generated by the account became insufficient for Mrs. Miller's needs. Claimant alleged that when she began requesting additional funds for Mrs. Miller's care, which she assumed was reducing the principal, Respondents made the distributions from a margin account. Claimant alleged that at no time did Mrs. Miller or Claimant understand that the margin account had been opened and was being used in this manner.

Claimant alleged that compounding the insufficient income generated by the account was the fact that the investments Respondents induced Claimant to authorize were illiquid and unmarketable. Claimant maintained that the investments were completely contrary to the needs of Mrs. Miller and in direct contrast to the investments sold to generate the funds to purchase the limited partnerships. Claimant alleged that Respondents negligently managed the account and should be held liable for the damages.

Respondents denied all allegations of wrong-doing asserted in the Statement of Claim. Respondents maintained that Claimant complains of the purchase of certain securities for a joint account that she held with her late mother, Mrs. Miller. Respondents maintained that the disputed investments, only one part of a portfolio comprised mainly of government-backed bonds, CDs, and equity mutual funds, have not lost any money. Rather Respondents maintained, the investments have provided steady, tax-sheltered annual distributions of 6.25%, 8%, 9%, 13% and 13%. Respondents maintained that the disputed investments have generated approximately \$85,000 in income.

Respondents maintained that Mrs. Miller opened an account with Hargreaves in the early 1970s. Respondents maintained that Hargreaves serviced the account until Mrs. Miller's death in June 1994. Respondents maintained that toward the end of 1989, Hargreaves met with Claimant to discuss the status of the account and the need to maximize income in order to provide for the substantial expenses associated with Mrs. Miller's confinement to a nursing home. Respondents maintained that the principal goal from that time forward was to maximize income. Accordingly, Respondents maintained that Hargreaves and Claimant decided on an investment strategy aimed at producing income to meet Mrs. Miller's needs and minimizing her tax liability.

In addition, Respondents maintained that to assist in the transfer of assets upon the death of Mrs. Miller, a joint account was created for Miller and Claimant. Respondent maintained that using a Power of Attorney, Claimant converted all the assets from Miller's single name to their joint names. Respondents maintained that Hargreaves, Claimant and Mrs. Miller all contemplated that all the assets in the account would become the sole property of Claimant upon Mrs. Miller's death.

Respondents maintained that Claimant's requests for income for Mrs. Miller exceeded the amount of money produced by the portfolio. Respondents further maintained that in late 1991, Hargreaves met with Claimant concerning the status of the portfolio and the need to increase income to keep pace with Mrs. Miller's rising nursing home costs. Respondents maintained that Hargreaves discussed with Claimant various investment options, including investments in limited partnerships, and related benefits and risks. Hargreaves recalls Claimant advising Hargreaves at the time, and on numerous other occasions, to do what you need to do, or words to that effect, to increase the returns in the account. Respondents maintained that at the time, Claimant specifically authorized the purchase of two limited partnerships.

Respondents maintained that in 1992, and continuing in 1993, interest rates dropped substantially. Respondents further maintained that following the dramatic drop in interest rates, the issuers of various mortgage-backed government bonds held by the Claimant's account refinanced the bonds. Respondents contended that as a result, large amounts of capital were returned to Claimant's account. Respondents maintained that at the time, new issues of government-sponsored or government-issued securities ("government-backed securities") were only paying approximately 5.5 % to 6.5 %. In contrast to the low returns being paid by government-backed securities, limited partnerships and REITs were providing safe, tax-sheltered returns as high as 13%. Respondents maintained that purchasing the government-backed securities, just as Claimant was increasing withdrawals to pay for her mother's health care needs, would have all but ensured the continuing gap between cash inflows and outflows. Such a course would have eventually caused the principal to be whittled away, resulting in even lower cash flows and a smaller inheritance for Claimant. Hargreaves maintained that he discussed with Claimant various investment options including the purchase of government-backed securities, mutual funds and higher-yielding limited partnerships. Respondents maintained that Claimant specifically authorized the purchase of the disputed investments (certain limited partnerships and the REIT) and that Claimant also authorized the limited use of margin to augment monthly cash flows.

#### **RELIEF REQUESTED**

Claimant requested damages to cover her losses in excess of \$50,000.00 but less than \$100,000.00; attorney's fees, as well as all costs and expenses incurred in this arbitration.

Respondents requested that the Claimant's Statement of Claim be dismissed; that all references to the arbitration be expunged from Hargreaves' CRD registration; attorneys' fees and costs in the amount of \$10,000; and such other and additional relief as this Panel may deem appropriate.

#### **OTHER ISSUES CONSIDERED & DECIDED**

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 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. That Respondents Wheat First and Hargreaves are jointly and severally liable to and shall pay to Claimant \$9,500.00.
2. That Respondents Wheat First and Hargreaves are jointly and severally liable to and shall reimburse Claimant for \$250.00 of the hearing session deposit previously submitted to the NASD Regulation.
3. That each party shall pay its own costs and expenses, including attorney's fees, with the exception of the Forum Fees as outlined below.
4. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

2 sessions x \$500.00 = \$1,000.00


Forum Fees are assessed at \$250.00 to Claimant and \$750.00 to Respondents, jointly and severally. Claimant is to receive credit for \$250.00 of hearing session deposit previously submitted to the NASD Regulation, leaving Claimant no further assessment. Respondents will receive credit for \$250.00 of the hearing session deposit submitted by Claimant, and reimbursed to Claimant by Respondents in the award, leaving Respondents a net assessment due of \$500.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

4/1/97

  
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Amelia F. Adams, Presiding  
Public Arbitrator

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George B. Davis  
Public Arbitrator

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Bert Cliff  
Industry Arbitrator

Date Decision Served by NASD Regulation:

March 31, 1997

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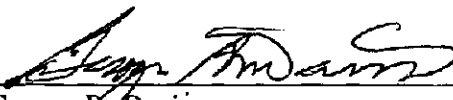
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CONCURRING ARBITRATORS' SIGNATURES

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Amelia F. Adams, Presiding  
Public Arbitrator

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George R. Davis  
Public Arbitrator

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Bert Cliff  
Industry Arbitrator

Date Decision Served by NASD Regulation: March 31, 1997

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Public Arbitrator

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George B. Davis  
Public Arbitrator

3-26-97

Bert S. Cliff  
Bert Cliff  
Industry Arbitrator

Date Decision Served by NASD Regulation: March 31, 1997