

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Rosalie M. Nolen

96-00913

Name of Respondents

Donaldson Lufkin & Jenrette Securities
Titan/Value Equities Group, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 29, 1996, claimant Rosalie M. Nolen ("claimant"), through her representative James D. Keeney, Esq. of the law firm of Namack, Clark & Keeney, located in Sarasota, Florida, alleged that respondents Donaldson Lufkin & Jenrette Securities ("DLJ") and Titan/Value Equities Group, Inc. ("TVE") negligently or fraudulently sold her shares in a limited partnership to her detriment. Claimant further alleged that in February of 1991, she opened an account with TVE and was divorced and fifty-eight years old at the time. Claimant also alleged that she had received a limited amount of cash from the divorce settlement, had an uncertain financial situation and wanted limited risk investments. Claimant contended that she met with Scott L. Cohen ("Cohen"), a now deceased representative of TVE, who in light of her financial situation, recommended that she sell her Exxon stock and purchase IDM Participating Mortgage Income Fund Limited Partnership (the "Fund") which she did on April 5, 1991. Claimant further contended that she did not meet the Fund's suitability requirements. Claimant also contended that the Fund was materially misrepresented as a safe investment when in fact its promoter was publicly teetering on the verge of bankruptcy at the time it was recommended. Claimant asserted 3 months after the purchase, the distributions ceased and shortly thereafter filed for bankruptcy protection. Claimant further asserted that respondents failed to inform her of these and other material developments concerning the Fund which caused her to hold the investment until it was worthless. Claimant alleged that as a result of the above, she has suffered a loss for which the respondents should be held liable.

Respondent Titan Value Equities Group, Inc. through its representative and in-house counsel, Kari S. Turigliatto, denied that it breached any duty owed to the claimant or made any false or misleading statements. Respondent maintained that since Cohen is now deceased, there is no

way for it to test the veracity of claimant's statements, however, claimant failed to offer corroborating evidence. Respondent further maintained that Cohen's alleged statements are hearsay under the Federal Rules of Evidence and should thus be deemed inadmissible. Respondent contended that claimant signed her Titan Client Data Form (the "Form") which contradicts her current statements concerning what her net worth was at the time the investment was made. Respondent also contended that according to the information on the Form, she was a suitable investor for the Fund. Respondent asserted that it immediately responded to the news that the Fund was in financial trouble by suspending sales. Respondent further asserted that it sold claimant the Fund but that respondent DLJ was custodian of the account which held the Fund. Respondent also asserted that as a result of the above, it should not be held liable.

Respondent Donaldson Lufkin & Jenrette Securities through its representative and in-house counsel, James D. Keeney, maintained that it acted as a clearing agent for respondent TVE. Respondent further maintained that in January of 1991, claimant opened an individual retirement account with TVE and that it acted as the account's clearing agent and custodian. Respondent also maintained that shares of the Fund were subsequently placed in the account. Respondent contended that as a matter of law it is not responsible for claimant's loss because claims of unsuitability and fraud in the purchase and continued recommendation are beyond the scope of its responsibilities as clearing agent. Respondent further contended that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Rosalie M. Nolen requested \$10,000.00 in actual damages plus 12% interest, costs, expenses, attorney's fees and filing fees.

Respondent Titan/Value Equities Group, Inc. requested that the claims be dismissed in their entirety and that it be reimbursed attorneys' fees and costs.

Respondent Donaldson Lufkin & Jenrette Securities requested that the claims be dismissed in their entirety and that it be reimbursed for costs and filing fees.

AWARD

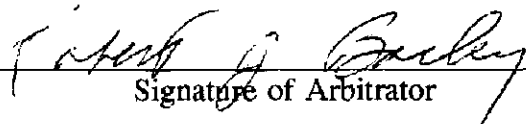
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert G. Bailey, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant on February 29, 1996, by respondent Titan/Value Equities Group, Inc. on March 22, 1996, and respondent Donaldson Lufkin Jenrette Securities on May 20, 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 the claimant Rosalie M. Nolen against respondents Donaldson Lufkin & Jenrette Securities and Titan/Value Equities Group, Inc. are denied in their entirety.
2. The parties shall bear their respective costs and attorneys fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimant shall be retained by the NASD, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, **Robert G. Bailey**, 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: December 6, 1996