

## **NASD REGULATION, INC. AWARD**

### **Office of Dispute Resolution**

In the Matter of the Arbitration Between

#### Names of Claimants

Karen and Pamela Nobel

Case No. 96-01759

#### Names of Respondents

JW Charles Securities, Inc. and Sheila Whitfield

### **REPRESENTATION OF PARTIES**

For Claimants: Gerald Z. Rossow, Esq., Jupiter, Florida.

For Respondents JW Charles Securities, Inc. ("JWC") and Sheila Whitfield ("Whitfield"):  
Charles Scarlett, Esq. of JW Charles Securities, Inc., Boca Raton, Florida.

### **CASE INFORMATION**

Statement of Claim was filed on April 23, 1996. Claimants' Submission Agreement was signed on April 10, 1996.

Statement of Answer was filed by Respondents on May 15, 1997. Respondents did not sign submission agreements.

### **HEARING INFORMATION**

A telephonic pre-hearing conference was conducted on December 2, 1996 with the full Panel presiding and on May 1, 1997 with the Chairperson presiding.

The evidentiary hearings were held on January 12 and 13, 1998, in Fort Lauderdale, Florida for a total of three sessions.

### **CASE SUMMARY**

Claimants alleged the following: Respondents made misrepresentations of material facts and omitted to state material facts to induce Claimants to invest in limited partnerships. Respondents failed to inform Claimants of the market trends of limited partnerships and advised Claimants that the recommended investment was better than

municipal bonds because the investment was safe, secure and sure to double the amount of the original investment. The investment was unsuitable for Claimants' stated investment goals. After five years, Claimants were notified of the partnership's dissolution and that their share in the proceeds would equal \$233.07 or 1% of the original investment.

In their joint Answer, Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated the following: Claimants' \$20,000.00 investment in the limited partnership made up only a small portion of Claimants' liquid net worth. Given Claimants' background and experience, the investment was suitable. Respondents did not misrepresent the securities and said investment was consistent with Claimants' investment decisions both before and after the investment in question. Respondents asserted the following affirmative defenses: failure to state a claim, compliance with all applicable rules and regulations, assumption of risk, superseding intervening causes, failure to mitigate damages, assumption of risk, and good faith.

#### **RELIEF REQUESTED**

Claimants requested an award of compensatory damages in the amount of \$20,000.00, lost interest in the amount of \$15,600.00, fees and expenses in the amount of \$3,000.00, punitive damages, and other relief the panel deemed just and appropriate.

Respondents requested that the claims asserted against them be dismissed in their entirety and that both parties bear their own attorney's fees and forum fees.

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

1. Initially, Respondents replied to the Statement of Claim by filing a motion pursuant to Rule 10304 of the NASD Code of Arbitration Procedure (the "Code") asserting that this matter was not eligible for arbitration. Subsequently, Respondents filed petitions for temporary and permanent injunctions in the Circuit Court for the Seventeenth Judicial Circuit for the State of Florida, Case No. 96-14082 CACE (11) and, upon denial, appealed to the Fourth District Court of Appeal, Case No. 97-1331. In an opinion filed on October 7, 1997, the Fourth District upheld the lower court decision. On December 11, 1996, this Panel issued its ruling denying the Respondents' Rule 10304 motion addressed to the Panel. On June 24, 1997, this Panel issued an order denying the Respondents' Motion to Reconsider Ruling With Respect to Rule 10304 Determination.

2. Respondents did not file properly executed submission agreements but are required to submit to arbitration pursuant to Rule 10301 of the Code. Having answered the Claim and appeared and testified at the hearing, Respondents are bound by the determination of this Arbitration Panel on all issues submitted.

3. 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 Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' requests for costs, expenses, punitive damages, and other relief are denied.

### **FORUM FEES**

Pursuant to Rule 10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$1,900.00 (one prehearing conference x \$400.00 per session, one prehearing conference x \$300.00 per session, plus three hearing sessions x \$400.00 per session).

1. Claimants are assessed the sum of \$1,900.00 payable to NASD Regulation, Inc.
2. NASD Regulation, Inc. shall retain the non-refundable filing fee of \$100.00 paid by the Claimant.

3. Claimants are assessed the sum of \$400.00 for the postponement of the hearing scheduled to commence on August 13, 1997 pursuant to Rule 10319 of the Code. NASD Regulation, Inc. shall retain the \$400.00 previously deposited in full satisfaction thereof.

4. Respondents are assessed the sum of \$400.00 for the postponement of the hearing scheduled to commence on December 17, 1997 pursuant to Rule 10319 of the Code. NASD Regulation, Inc. shall retain \$200.00 of the funds previously deposited by Respondents in partial satisfaction thereof leaving a balance due in the amount of \$200.00.

**Fees are payable to NASD Regulation, Inc.**

Concurring Arbitrators' Signatures

/s/

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W. Allen Schmitt  
Public Arbitrator, Presiding Chair

/s/

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George W. Rodormer  
Public Arbitrator

/s/

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Dennis S. Shore  
Industry Arbitrator

Date of Decision: 2-27-98