

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Finn R. Stordahl and Evelyn E. Stordahl,

Claimants,

and

No. 96-01803

SunAmerica Securities, Inc.,

Respondents.

REPRESENTATION OF PARTIES

Claimants Finn R. Stordahl and Evelyn E. Stordahl were represented pro se.

Respondent SunAmerica Securities, Inc. was represented by John Nicgorski, Esquire of Mohr, Hackett, Pederson, Blakley, P.C., located in Phoenix, Arizona.

CASE INFORMATION

Claimants Finn R. Stordahl and Evelyn E. Stordahl's Statement of Claim was filed on or about April 26, 1996. Claimants Finn R. Stordahl and Evelyn E. Stordahl's Submission Agreement was signed on May 28, 1996.

Respondent SunAmerica Securities, Inc.'s Statement of Answer was filed on or about July 26, 1996. The NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement from respondent SunAmerica, Inc.

HEARING INFORMATION

A pre-hearing conference was held on March 3 and 4, 1997 for one (1) session each.

The hearing was held on March 24, 1997 for one (1) session.

The hearing was held in Scottsdale, Arizona.

CASE SUMMARY

Claimants Finn R. Stordahl and Evelyn E. Stordahl (hereinafter collectively referred to as "Claimants") brought this action to recover the amounts they invested in limited partnerships through Charlie Golom ("Mr. Golom"), a registered representative of respondent SunAmerica Securities, Inc. ("Respondent").

According to Claimants, they invested in 25 units of Parker & Parsley Petro Co. at a price of \$1,000 per unit on October 13, 1989, which was accepted by Parker & Parsley Petro Co. on October 31, 1989, and they invested in another 25 units at a price of \$1,000 per unit on August 2, 1990, which was accepted on October 5, 1990. Claimants alleged that these investments were unsuitable and made upon the misrepresentations and omissions of material facts of Mr. Golom. Claimants alleged that Mr. Golom: failed to supply them with copies of the prospectuses for these investments; failed to verify that the applications had been read and filled in by the investor and not filled out by the agent with the use of false information and forged signatures; failed to inform Claimants that limited partnerships are not always liquid or marketable; claimed that the investments were guaranteed; claimed that the entire amount of the investments could be recovered three years after their purchase; and that these investments would double in value in three years. Claimants asserted that shortly before the end of the three year period they discovered that these investments were on a thirty year payout cycle, which they claimed was representative of usury and collusion on the part of Respondent and Parker & Parsley Petro Co.

Respondent denied the allegations set forth in the Statement of Claim. Respondent asserted the following defenses: (1) Certain investments in the Statement of Claim are not eligible for arbitration under § 15 of the NASD Code because those investments were purchased more than six years before the date of filing of the Statement of Claim. (2) The Statement of Claim fails to state a claim upon which relief can be granted. (3) The NASD has no jurisdiction over certain claims. (4) Respondent had no duty or obligation to supervise Mr. Golom during periods when Mr. Golom was not a registered representative/independent contractor of, or otherwise associated with Respondent. (4) Respondent is not vicariously liable for any of Mr. Golom's alleged actions or inactions because Mr. Golom was an independent contractor, not an employee of Respondent. (5) Respondent did not have actual knowledge, and could not have reasonably known or been informed of any violation of law, rule or regulation, or the NASD Rules of Fair Practice on the part of Mr. Golom, if any. (6) During all applicable times, Respondent fully discharged all of its duties pursuant to the NASD Rules of Fair Practice. (7) Respondent at all times acted reasonably, in good faith and with due diligence and did not directly or indirectly induce any violation of law. (8) Any damages sustained by Claimants, which Respondent denies, were the result of Claimants' sole, contributory or comparative, negligence, were caused and contributed to by persons other than Respondent, and such other persons may be liable to Claimants for all or part of such claimed damages. (9) Claimants have utilized and/or consulted with other financial advisors regarding the purchase of the investments. (10) Claimants assumed the risk of loss, if any, of the investments identified in the Statement of Claim. (11) The Statement of Claim is barred by the applicable statutes of limitation. (12)

Claimants have not, and cannot, establish that the investments are worth anything less than the amount invested. (13) The investments were suitable and in accordance with Claimants' investment objectives. (14) Claimants made certain representations to Mr. Golom and/or other brokers regarding Claimants' sophistication as investors, net worth, investment objectives, and risk tolerance such that had these representations not been made, the investments would not have been sold to Claimants by the sponsors of the investment. (15) Claimants have acknowledged the receipt of the current prospectus for the investments prior to their purchase of an interest in that investment, that they have read such prospectus, and that they signed offering documentation certifying that the investments were suitable for them. (16) An up-to-date prospectus for the investments adequately disclosed all information and risks associated with the investments. (17) There were no misrepresentations or misstatements of material fact or omissions of material fact made in the prospectus provided to Claimants prior to the purchase of the investments, or made to Claimants in any other manner. (18) Given the risks associated with the investments which were all disclosed to Claimants in a current prospectus for the investments, Claimants' investment objectives, and all relevant circumstances, any claimed reliance on the alleged oral statements/omissions was not reasonable. (19) Claimants' damages, if any, were caused by their decision to purchase the investments, risks inherent in investments in general and those associated with partnership interest, economic conditions, market factors, and other events or persons. (20) Claimants lack standing to bring the claim on behalf of her husband's estate.

RELIEF REQUESTED

Claimants Finn R. Stordahl and Evelyn E. Stordahl requested an award for: compensatory damages in the amount of \$50,000; profits accrued on their investments; and costs and expenses incurred in this matter.

Respondent SunAmerica Securities, Inc. requested that the Statement of Claim be dismissed with prejudice and that it be awarded its costs, expenses, and attorneys' fees pursuant to § 43(c) of the NASD Code.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent SunAmerica Securities, Inc. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code"), and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Prior to the hearing in this matter, respondent SunAmerica Securities, Inc. moved to dismiss claims based upon the applicable statute of limitations. The undersigned panel of arbitrators scheduled the March 24, 1997 in-person hearing for consideration of this motion and all timely responses thereto.

AWARD

After considering the pleadings, the Motion to Dismiss and Responses thereto, and the oral argument presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination in favor of Respondent and against Claimants as follows:

Having considered the parties' previous submissions, documentary evidence and matters presented at the hearing held on March 24, 1997, on Respondent's (SunAmerica) motion to dismiss, which the parties attended and given the opportunity to be heard, the undersigned arbitrators find that the Claimants' claims are barred by the applicable statutes of limitation based on the following facts and for the following reasons:

For purposes of Respondent's motion only, the facts as stated by Claimants are assumed to be true. The Stordahls (Claimants) purchased and signed subscription agreements for the interests in two Parker & Parsley oil and gas partnerships, for which they seek damages and restitution, on October 13, 1989 and August 2, 1990, respectively. The subscription agreements the Stordahls signed state that they acknowledged receipt of the respective prospectuses and that they understood the nature and risks involved in the offerings. However, the Stordahls never received prospectuses and SunAmerica's sales representative, Charles Golom, falsified the amount of their qualifying income and net worth to meet suitability requirements. Golom also verbally promised and assured them that they would receive all their money back "three years and a day" hence, and those promises and assurances induced them to make those purchases. That is, based on Golom's verbal representations, the Stordahls expected to receive a return equalling the amount of their investment no later than October 14, 1992, and August 3, 1993, respectively.

In late April or May, 1992,¹ Mr. Stordahl first became aware of the fact that Golom's representations were false after he contacted Parker & Parsley about distributions he anticipated receiving shortly. A company representative told him that the payback was not on a three-year, but a 30-year schedule and that he should check the prospectuses, which if he did not have, he could obtain from his sales representative. At Mr. Stordahl's request, Golom mailed him a prospectus² on May 29, 1992. And, in a July, 1994 complaint that Mr. Stordahl sent to the Better Business Bureau about this matter, he stated that the "problem" occurred in May, 1992.

On August 5, 1994, Mr. Stordahl also wrote the NASD about Golom's

¹Mr. Stordahl first said April 25th and later he said May 18th.

²Although the prospectus Golom mailed was for a different Parker & Parsley partnership, it apparently was similar.

misrepresentations. The NASD office in Denver advised him by letter dated September 2, 1994, that because of the amount of time that had elapsed since the purchases of the partnership interests, it was unable to conduct an investigation into the allegedly illegal and fraudulent acts. However, the letter also informed Mr. Stordahl that if he wanted to seek monetary compensation from Golom or SunAmerica, he could submit the matter to arbitration by writing NASD's Arbitration Department in New York for information on how to submit a claim.

Mr. Stordahl did not follow the instructions and advice that the NASD provided him in its September 2, 1994, letter, but instead, he sent letters to the Arizona Attorney General's Office, SunAmerica and the Securities and Exchange Commission. Finally, Mr. Stordahl filed an arbitration claim with the NASD and paid the filing fee to recover damages for the 1989 and 1990 purchases on April 23, 1996. Mr. Stordahl stated that the only thing he knew about a time limit for filing claims was that the NASD had a six-year limitation. However, other than for asking an attorney at a social event in January, 1995, about how he could obtain a list of Parker & Parsley investors, the Stordahls never sought the advice of counsel about their claims or applicable statutes of limitations.

Although the Stordahls have not cited the legal or statutory basis for their claims, those claims sound either as claims for (1) federal securities fraud, (2) state securities fraud, (3) failure to timely provided a prospectus, (4) common law fraud, (5) consumer fraud, (6) negligence, and/or (7) breach of oral contract. The statutory time limit for filing federal securities fraud, common law fraud and breach of oral contract claims is three years. The statutory time limit for filing state securities fraud and negligence claims is two years, while the statutory time limit for filing claims for prospectus violations and consumer fraud is one year.

Therefore, based on relevant federal and state statutory and judicial precedent and the authority Respondent provided (to which Claimants offered no rebuttal), the longest of the above statute of limitations applicable to the facts in this case expired in May, 1995, which is three years after Mr. Stordahl, by his own admission, first became aware that he would not get all his money back from the partnership investments when Golom promised.³ In fact, the statutory time limit for filing these claims may well have expired much earlier because it either began to run from the date of purchase, or even under the "discovery" rule, a reasonably prudent investor should have known that Mr. Golom's representations were false before May of 1992, particularly given the size of the investments involved.

³Claimants have received some \$36,200 back of their total \$50,000 invested, comprised of \$26,200 in distributions received and \$10,000 Parker & Parsley subsequently paid to repurchase their interests.

Even if Mr. Stordahl had heeded the NASD's 1994 letter, he still had the better part of a year, over eight months, left to file these claims, which but for their untimeliness may well have merit. However, for reasons for which he had no explanation, he chose not too so until April 23, 1996.

The six-year time limit that Mr. Stordahl keeps referring to is § 10304 (formerly § 15) of the NASD Code of Arbitration Procedure, which provides: "No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy. *This Rule shall not extend applicable statutes of limitations . . .*" (Emphasis added). Thus, the NASD six-year time limit expressly does not override the above statutes of limitations that apply to this case.

In other words, what § 10304 means is this: even if the applicable statute of limitations allowed a claim to be filed more than six years after the act or event giving rise to the claim, such a claim could not be submitted to NASD arbitration; but if a claim is filed for NASD arbitration within six years of the act or event, the submission will be accepted and the claim will be assigned to an arbitration panel for further consideration of the issues, including the timeliness of the claim. If the claim was not filed within the applicable statutory period of limitations, even though it may have been filed within the NASD time limit,⁴ the arbitrators can and should dismiss it. That is precisely the situation in this case, and the reason for granting the Respondent's motion to dismiss.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) pre-hearing conferences x \$300 = \$600 and there was one (1) hearing session x \$500 = \$500. Total forum fees are thus \$600 + \$500 = \$1,100. Pursuant to Rule 10332(b) of the Code a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10322(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by claimants Finn R. Stordahl and Evelyn E. Stordahl.

Additional forum fees in the amount of \$600 are assessed by the arbitrators against the Claimants.

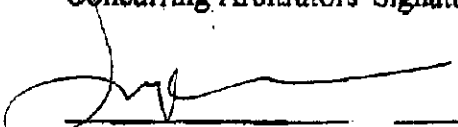
⁴Even under the NASD rule, the Stordahls' claims relating to the 1989 purchase would be time-barred because those claims were filed more than 6 1/2 years after the date of the purchases.

Otherwise, Claimants and Respondent shall bear their own costs and attorneys' fees.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$300 previously deposited by Respondent.

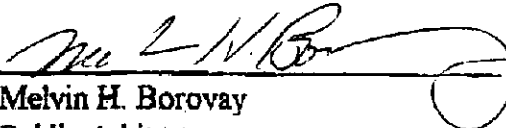
Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures



Louis M. Parker, Esquire
Chairperson
Public Arbitrator

4/24/97
Dated:



Melvin H. Borovay
Public Arbitrator

4/25/97
Dated:



William L. Olson
Industry Arbitrator

4-24-97
Dated: