

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Dorothy A. Mauch,
Robert E. Smith and James D. Smith (JTWROS), and
Robert E. Smith and Annette M. Smith (JT TEN)

and

96-02062

Name of Respondent

Miller Johnson & Kuehn, Inc.
Brent Ripley

REPRESENTATION OF PARTIES

Dorothy A. Mauch, Robert E. Smith and James D. Smith (JTWROS), and Robert E. Smith and Annette M. Smith (JT TEN) ("**Claimants**") were represented by Edward J. Cleary, Esq., St. Paul, Minnesota.

Miller Johnson & Kuehn, Inc. ("**Respondent MJK**") and Brent Ripley ("**Respondent Ripley**") were represented by Seth M. Colton, Esq. and Stephen E. Yoch, Esq., Maun & Simon, PLC, St. Paul, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about May 10, 1996. Submission Agreement of Claimant James D. Smith was signed on May 8, 1996. Submission Agreement of Claimants Robert E. Smith and Annette M. Smith (JT TEN) was signed on May 9, 1997.

Statement of Answer was filed by Respondents Miller Johnson & Kuehn, Inc. and Brent Ripley on or about July 25, 1996. Submission Agreement of Respondent Miller Johnson & Kuehn, Inc. was signed on July 24, 1996 by Jerome W. McClees. Submission Agreement of Respondent Brent Ripley was signed on July 24, 1996.

HEARING INFORMATION

The hearing was held on April 29, 1997 for one (1) session, May 7, 1997 for two (2) sessions, May 8, 1997 for two (2) sessions, May 9, 1997 for two (2) sessions in Minneapolis, Minnesota for a total of seven (7) sessions.

CASE SUMMARY

Claimants Dorothy A. Mauch (deceased) and Robert E. Smith and James D. Smith (nephews of deceased), held one account as joint tenants with the right of survivorship with respondents. Robert E. Smith and Annette M. Smith held a separate account with respondents as joint tenants. Claimants allege that Respondent (Ripley), a registered representative of respondent Miller, Johnson & Kuehn, Inc., sold them unsuitable securities, namely, limited partnerships, from November of 1989 to July of 1991 in a series of 11 trades that resulted in the purchase of over \$370,000 of limited partnerships in the Dorothy Mauch account and over \$136,000 of limited partnerships in the Robert and Annette Smith account. It is alleged that these purchases were made due to unsuitable investment advice on the part of respondent Ripley; that respondents engaged in negligence and misrepresentation; breached fiduciary duties and violated the Minnesota Consumer Act, as well as Minn. Stat. § 80A.01, Minnesota Securities Rules 2875.9010 and NASD Rules of Fair Practice, Article III, Section 2.

Respondent denied the material allegations in the Statement of Claim and asserted that the claimants were fully informed and made independent decisions. Specifically, respondents assert that the claimants had sufficient sophistication and resources to engage in the purchases of the limited partnerships.

RELIEF REQUESTED

Claimants Robert and Annette Smith request in excess of \$99,000 and Claimants Robert and James Smith request in excess of \$258,000 representing compensatory damages; punitive damages; attorneys' fees and other relief the Panel deems equitable.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The undersigned arbitrators considered respondents' Motion to Dismiss a number of Claimants' individual claims as time barred. The undersigned arbitrators dismissed two claims based on investments made prior to January, 1990.

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 original(s) 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1 Respondents Miller Johnson & Kuehn, Inc. and Brent Ripley shall be and hereby are jointly and severally liable for and shall pay to the Claimants the total amount of \$150,000 (**one hundred fifty thousand dollars and no cents**). This sum includes an award of interest.
2. Each party shall bear its own costs, expenses and fees, including attorneys' and expert witness fees, incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were seven (7) sessions x \$1,000 = \$7,000 in forum fees. Pursuant to §10332(b) 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 §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimants Dorothy A. Mauch, Robert E. Smith and James D. Smith (JTWROS), and Robert E. Smith and Annette M. Smith (JT TEN). Claimants Dorothy A. Mauch, Robert E. Smith and James D. Smith (JTWROS), and Robert E. Smith and Annette M. Smith (JT TEN) shall be and hereby are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,500 as forum fees. Respondents Miller Johnson & Kuehn, Inc. and Brent Ripley shall be and hereby are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$3,500 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **assess** the non-refundable member surcharge in the amount of \$500 against Respondent Miller, Johnson & Kuehn, Inc. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Stephen B. Young, Esq.

Stephen B. Young, Esq.
Public Arbitrator, Presiding Chair

June 18, 1997

/s/ Mark S. Gleason, Esq.

Mark S. Gleason, Esq.
Public Arbitrator

June 17, 1997

/s/ James Nyquist

James Nyquist
Industry Arbitrator

June 18, 1997