

N.A.S.D. AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Community Church of Barrington

96-02448

Name of Respondents

John Dawson;  
John Dawson & Associates

**REPRESENTATION**

For Claimant: Community Church of Barrington ("Church") was represented by Randall L. Mitchell, Esq. of Adducci, Dorf, Lehner, Mitchell & Blankenship, P.C., located in Chicago, Illinois.

For Respondents: John Dawson ("Dawson") and John Dawson & Associates ("Associates") were represented by Thomas P. Ward, Esq. of McBride Baker & Coles, located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: June 10, 1996.

Claimant's Submission Agreement signed on: May 4, 1996 by Ruth C. Johnson, Member of the Board of Trustees, Community Church of Barrington.

Amended Statement of Claim filed: June 20, 1996.

Statement of Answer filed by Respondents Associates and Dawson on: August 15, 1996.

Respondent Associates' Submission Agreement signed on: August 5, 1996.

Respondent Dawson's Submission Agreement signed on: August 5, 1996.

**HEARING INFORMATION**

Pre-Hearing Conference: March 24, 1997.

Hearing Date/Sessions: July 16, 1997 for Three (3) sessions.

Hearing Location: Chicago, Illinois.

**CASE SUMMARY**

Claimant alleged that Respondents induced the purchase of unsuitable stocks and bonds for the Church endowment fund. The Church made the following allegations:

1. In 1993, the Church Board of Trustees drafted a written investment policy to be used to preserve the Church's assets. Dawson was requested to prepare an investment recommendation of the Church endowment fund following the written policy. He advised the purchase of 30-40 year corporate bonds and preferred stocks, but never properly explained the risks associated with the rise of interest rates or any alternative investment strategy.
2. In January 1994, the Church opened an account with Respondents and invested the funds as recommended by Dawson. However, the investments were not suitable for the Church's endowment fund or consistent with its investment policy because:
  - a. The entire portfolio was invested in long-term securities that were highly interest sensitive and exposed the portfolio to risk of significant loss if the interest rates went up;
  - b. An undue percentage of the portfolio was invested in preferred stock issued by electric utilities and the Church was unable to make use of the tax deductions associated with the stock because of its tax-exempt status; and
  - c. The purchase of Iowa Electric Light & power was particularly unsuitable because the security was unregistered and extremely illiquid.
3. In addition, Dawson charged exorbitant commissions in excess of those he represented to the Trustees he would charge and greater than those normally charged for the purchase of these securities. In addition, Respondents caused the Church to pay higher prices for the securities than could have been obtained through reasonable efforts.

Respondents denied the material allegations of the Statement of Claim, alleging that the investments were suitable because the objective was to obtain maximum return, and not the current market value of the security. While the market value did decline due to change in interest rates, there was no concern about short-term fluctuation in the market value of the securities invested to produce income. The securities continued to pay dividends and were not in danger of default. The bonds would be redeemed at par upon maturity and the Church was never under any compulsion to sell the issues purchased to produce better income.

Before the end of 1994, a new finance committee replaced the old at the church and demanded that Associates buy back the securities at the price paid for them when the interest rates were low. Respondents rejected the demand, causing the new Finance Committee to transfer the portfolio to another broker. Respondents further asserted that a private right of action cannot be based on a disciplinary rule of a self

regulatory organization. In addition, the mark up of the securities was proper and did not exceed NASD requirements.

#### **RELIEF REQUESTED**

Claimant requested entry of an award against Respondents of \$11,118.00, plus reasonable attorneys' fees and costs, punitive damages of \$10,000.00, and such other relief as the panel deemed appropriate.

Respondents requested that the Panel deny in their entirety all claims made by the Church and award Respondents all costs and attorneys fees in defending the claim.

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

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

#### **AWARD**

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

1. The claims of Community Church of Barrington are dismissed and denied in the entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

#### **OTHER COSTS**

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$300.00 adjournment fee paid by the Claimant, Community Church of Barrington. In addition, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 member surcharge paid by Respondent John Dawson & Associates pursuant to Section 10333 of the Code of Arbitration Procedure.

#### **FORUM FEES**

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing conference x \$300.00 = \$300.00; Three (3) hearing sessions x \$300.00 per session

= \$900.00; Total forum fees = \$1,200.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$100.00 claim filing fee and shall retain as forum fees the \$300.00 hearing session deposit paid by the Claimant, Community Church of Barrington. In addition, the \$300.00 adjournment fee retained by the Office of Dispute Resolution shall be applied to the remaining forum fees assessed against the Claimant, Community Church of Barrington. Respondents John Dawson & Associates and John Dawson are jointly and severally liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$600.00 as forum fees.

Arbitrator's Signature

Name

Date

/s/ Lee H. Goodman

July 18, 1997

Lee H. Goodman

Public Arbitrator