

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Carole L. Nelson

96-03487

Name of Respondents

Lutheran Brotherhood Securities Corp.
Floyd Skeins
Lutheran Brotherhood Variable Insurance

CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on August 13, 1996, claimant Carole Nelson ("claimant"), through her representative and counsel Jean Lang of the law Investment Disputes Arbitration, located in Largo, Florida, alleged that respondents Floyd Skeins ("Skeins"), Lutheran Brotherhood Securities ("LBS") and Lutheran Brotherhood Variable Insurance Products Company ("LBV") sold her securities while she was a 71 old widow, suffering from emphysema. Claimant also alleged that her financial affairs were fraudulently reported on the annuitant's/registered representative's report ("ARR") by the broker. Claimant asserted that the ARR had her husband's income at \$15,000.00, yet her husband was dead. Claimant further asserted that she was instructed to sign an incomplete ARR even though she had previously given Skeins the information needed to complete the report. Claimant also asserted that despite her request for a secure steady income from this investment, respondents sold her a junk bond backed annuity. Claimant contended that this annuity was 95.4% invested in below investment grade (junk) bonds at the time of the purchase.

Claimant further contended that the prospectus was mailed to claimant in the last week of April 1994, although the contract was signed and paid for on April 4, 1994. Claimant also contended that there is no way that a widow in her seventies, with a high school education and no investment experience could be considered a sophisticated investor. Claimant alleged that respondents breached their fiduciary duty when they placed her total funds in an annuity backed 95.4% junk bonds. Claimant further alleged that respondents never explained to her the risks involved in purchasing this type of security. Claimant also alleged that she was guaranteed a 10% rate of return on this investment. Claimant asserted the LBS, and LBV failed to properly supervise their broker.

Respondent Skeins, LBS, and LBV (collectively referred to as "respondents") through their representative and counsel David Ackerman of the law firm Ackerman, Link & Sartory, P.A., located in West Palm Beach, Florida, maintained claimant came to them with a single demand and goal, she sought income. Respondents further maintained that claimant sought a monthly distribution of \$650.00, a rate of return on her initial investment of approximately 9.5%. Respondents also maintained that claimant was aware that certificates of deposit ("CD's") were providing a rate of return of only 3.75%. Respondents

contended that claimant on her own calculation realized that this was not enough money, so Skeins recommended an annuity. Respondents further contended that the fixed rate annuity had a rate of return in 1994 of 5%, which was still insufficient, so the Flexible Premium Deferred Variable Annuity ("Annuity") was recommended. Respondents also contended that the variable annuity was suitable for claimant in light of her investment goals and objectives because it would allow claimant to make a regular systematic withdraw, provide the benefit of diversification within the various subaccounts, and did not required payment of an initial up-front charge.

Respondents maintained that claimant understood the nature of the investment before her decision to invest. Respondents further maintained that the nature of the investment and the material features were explained to claimant both orally and in writing. Respondents also maintained that receipt of the prospectus is acknowledged on the application executed on April 4, 1994. Respondents contended that the prospectus claimant received at the end of April, was not the original prospectus, but rather was an updated prospectus which is periodically provided to investors as a matter of course. Respondents further contended that claimant acknowledged, in writing, in the application executed by claimant on April 4, 1996, that there was no guarantee of return. Respondents also contended that claimant was provided with a "free lock" period in order to review the investment and cancel the contract if she changed her mind about investing.

Respondents maintained that claimant was informed that her investment was a long term investment and that she was required to remain in the investment for six years in order to avoid surrender penalties. Respondents further maintained that in 1994, the Federal Reserve took unprecedented steps in increasing interest rates. Respondents also maintained that when claimant saw the value of her annuity decreasing with each interest hike, she called Skeins to question her statements. Respondents contended Skeins again explained the effect of interest on the investment and that it was designed to be held for six years. Respondents further contended that claimant totally disregarded Skeins recommendations and only after ten months, surrender her annuity.

RELIEF REQUESTED

Claimant Carole Nelson requested: (1) \$7,228.83 in damages; (2) \$2,400.00 for attorneys' fees; and (3) punitive and such other damages and relief as the arbitrator deems just and proper.

Respondents LBS, LBV and Skeins requested that the claims of claimant be dismissed in their entirety.

AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, James Smith IV, was selected to review the matter in controversy between the parties set forth in Submissions to Arbitration signed by claimant Carole Nelson on September 27, 1995. Respondents LBS, LBV and Skeins did not execute a Submission Agreement as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.

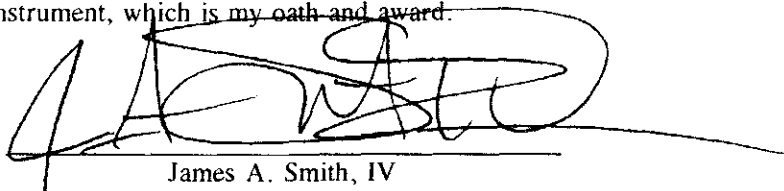
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of claimant Carole Nelson against LBS, LBV and Skeins are dismissed in their entirety.

2. All other relief requests are denied.
3. The \$150.00 filing fee previously deposited by claimant shall be retained by NASD Regulation, Inc. Respondents LBS, LBV and Skeins be and hereby are jointly and severally liable and shall pay claimant the sum of \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **James Smith, IV**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



James A. Smith, IV

Date of Decision: April 30, 1997