

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant

Gertrude K. Nye

v.

Arbitration No.
96-03494

Name of Respondent

First Southwest Company

Name of Third-Party Respondent

Lawrence R. Malin

REPRESENTATION

For Claimant:

Michael H. Whitehill, Esq.
Kussman & Whitehill, L.P.
Los Angeles, California

For Respondent:

Dee Kelly, Jr., Esq.
Kelly, Hart & Hallman
Fort Worth, Texas

For Third-Party Respondent:

William F. Davis, Esq.
Pacific Palisades, California

CASE INFORMATION

Statement of Claim filed:	August 13, 1996
Claimant's Submission Agreement signed:	August 5, 1996
Respondent First Southwest Company's Answer/Third-Party Claim filed:	January 13, 1997
Respondent First Southwest Company's Response to Counterclaim filed:	April 23, 1997
Respondent First Southwest Company's Submission Agreement signed:	October 31, 1996
Third-Party Respondent Lawrence R. Malin's Answer/Counterclaim filed:	February 24, 1997
Third-Party Respondent Lawrence R. Malin's Submission Agreement signed:	February 12, 1997

HEARING INFORMATION

Pre-Hearing Conference Dates/Sessions:	January 14, 1997 (1 session)
Hearing Dates/Sessions:	July 1, 1997 (2 sessions) July 2, 1997 (2 sessions)
Hearing Location:	Los Angeles, California

CASE SUMMARY

Claimant alleged that Respondent First Southwest Company committed fraud, constructive fraud, breach of fiduciary duty, conversion, intentional infliction of emotional distress, and misrepresentation in connection with securities purchased and managed on Claimant's behalf.

Respondent First Southwest Company denied Claimant's and Third-Party Respondent's claims in their entirety. Respondent further alleged that Third-Party Respondent Malin should indemnify Respondent for any damages incurred pursuant to §27 of Third-Party Respondent Malin's Representative Agreement.

Third-Party Respondent Malin denied Respondent First Southwest Company's claims in their entirety. He further alleged in his counter-claim that Respondent First Southwest Company committed breach of contract against him.

RELIEF REQUESTED

Claimant sought:

1. Compensatory damages according to proof;
2. General, special and exemplary damages according to proof;
3. Pre- and post-judgment interest; and,
4. Attorney's fees and costs.

Respondent First Southwest Company sought dismissal of Claimant's claim and Third-Party Respondent Malin's Counterclaim in their entirety, attorney's fees, costs and indemnity by Third-Party Respondent Malin for any liability.

Third-Party Respondent sought dismissal of Respondent First Southwest Company's claim for indemnity in its entirety, as well as, \$400,000.00 in compensatory damages for breach of contract, attorney's fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 remains 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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent First Southwest Company is liable to and shall pay Claimant \$203,490.00 in compensatory damages, \$3,100.00 in costs and \$20,000.00 in attorney's fees. Attorney's fees are awarded pursuant to paragraph seven of the new account agreement executed between Claimant and Respondent.
2. Claimant's claim for exemplary damages is denied in its entirety.
3. Respondent First Southwest Company's claim for indemnification against Third-Party Respondent Malin is denied in its entirety.

4. Pursuant to paragraph 26 of the Representative Agreement executed between Respondent First Southwest Company, and Third-Party Respondent Malin, Respondent First Southwest Company is liable to and shall pay Third-Party Respondent Malin the sum of \$7,344.00 in attorney's fees.
5. Third-Party Respondent Malin's claim for breach of contract against Respondent First Southwest Company is denied in its entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed against Respondent First Southwest Company:

One (1) Pre-Hearing Conference @ \$750.00/Session	= \$750.00
<u>Four (4) Hearing Sessions @ \$750.00/Session</u>	<u>= \$3,000.00</u>
Total Forum Fees Assessed	= \$3,750.00
 Respondent First Southwest Company's Assessment	 = \$3,750.00
<u>Credit for Hearing Session Deposit</u>	<u>= \$1,000.00</u>
Respondent First Southwest Company's Balance Due	= \$2,750.00

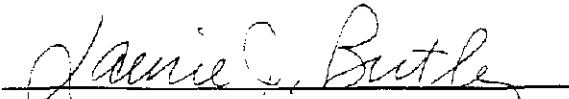
Claimant's and Third-Party Respondent Malin's Hearing Session Deposits shall be refunded by NASD Regulation, Inc.

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Laurie J. Butler, Esq.	Public Arbitrator
Mary E. Cobb	Industry Arbitrator
Kenan Oldham, Esq	Public Arbitrator

Concurring Arbitrators' Signatures



Laurie J. Butler, Esq.

Mary E. Cobb

Kenan Oldham, Esq.

Date of Service:

July 21, 1997

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Laurie J. Butler, Esq.	Public Arbitrator
Mary E. Cobb	Industry Arbitrator
Kenan Oldham, Esq	Public Arbitrator

Concurring Arbitrators' Signatures

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Kenan Oldham, Esq.

Date of Service: July 21, 1997


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Mary E. Cobb



Kenan Oldham. Esq.

Date of Service: July 21, 1997