

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

The Isherwood Trust C, by
and through its Co-Trustee and
Beneficiary Arlene Isherwood and
Temporary Co-Trustee William Isherwood,

Claimants.

v.

No. 96-03648

Michael L. Schrank, and
Dain Bosworth Incorporated.

Respondents.

REPRESENTATION OF PARTIES

Claimants The Isherwood Trust C, by and through its Co-Trustee and Beneficiary Arlene Isherwood and Temporary Co-Trustee William Isherwood ("Claimants") were represented by Steven W. Keane, Esq. and Jeffrey J. Liotta, Esq. of Hinshaw & Culbertson located in Milwaukee, Wisconsin.

Respondents Michael L. Schrank ("Schrank") and Dain Bosworth Incorporated ("Dain Bosworth") (jointly referred to as "Respondents") were represented by Lynne M. Rasmussen, Esq. and Carol A. Peterson, Esq. of Dorsey & Whitney LLP located in Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about August 26, 1996.

The Amended Statement of Claim was filed on or about March 10, 1997.

Claimants' Submission Agreement was signed on September 24, 1996 by Arlene Isherwood and on March 26, 1997 by William Isherwood.

The Joint Statement of Answer was filed on or about November 27, 1996.

The Amended Statement of Answer was filed on or about January 14, 1998.

Respondent Schrank's Submission Agreement was signed on December 10, 1996.

Respondent Dain Bosworth's Submission Agreement was signed on November 26, 1996.

HEARING INFORMATION

The telephonic pre-hearing conference was held on November 7, 1997 for one (1) session.

The hearing was held on February 2, 1998 for three (3) sessions; February 3, 1998 for two (2) sessions; March 19, 1998 for three (3) sessions; and March 20, 1998 for two (2) sessions. The hearing location was Milwaukee, Wisconsin.

CASE SUMMARY

Claimants have alleged that Dain Bosworth and Schrank committed the following wrongs: churning, unsuitable recommendations and solicited transactions, violations of federal and state law. Specifically, Claimants have alleged that Respondents are liable for the purchases of unsuitable securities for Trust C; that Respondents churned the Trust C account for commissions; and that Dain Bosworth failed to adequately supervise its registered representative, Schrank, in accordance with its responsibility.

Respondents deny Claimants' allegations and assert that all transactions in the Trust C account were approved by Thomas Isherwood, its co-trustee. Respondents also assert the following affirmative defenses: (1) Claimants are estopped to claim damages by Arlene Isherwood's improper delegation of her responsibilities as trustee; (2) Claimants are estopped to assert their

claims by their collusive conduct in initiating this lawsuit; (3) Claimants' claims are barred in whole or in part by the statute of limitations; (4) Claimants are estopped to assert their claims, has waived their claims, and ratified Respondents' actions by failing promptly to object to the activity in the Trust C account; (5) Claimants' alleged damages were caused by third parties, market forces beyond Respondents' control, and Arlene Isherwood's acts and omissions; (6) Respondents at all times acted in good faith and followed all applicable industry rules and regulations; and (7) punitive damages are not appropriate.

RELIEF REQUESTED

Claimants requested, in the event of a finding of unsuitability (with or without a finding of churning), damages of \$584,844.00 for out-of-pocket and market adjusted losses, pre-hearing interest of \$122,481.00, attorneys' fees, expert witness fees and costs, and punitive damages. Claimants requested, in the event of a finding of churning only, damages of \$181,070.00 for commissions and margin interest paid, pre-hearing interest of \$37,921.00, attorneys' fees, expert witness fees and costs, and punitive damages.

Respondents requested that the Claimants' claims be denied and no damages be awarded.

OTHER ISSUES CONSIDERED & DECIDED

Claimants' Motion for Default Judgment was denied.

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 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) That Respondents Michael L. Schrank and Dain Bosworth Incorporated are jointly and severally liable for and shall pay to Claimants The Isherwood Trust C, by and through its Co-Trustee and Beneficiary Arlene Isherwood and Temporary Co-Trustee William Isherwood compensatory damages in the amount of \$221,000.00;
- (2) That Respondents Michael L. Schrank and Dain Bosworth Incorporated are jointly and severally liable for and shall pay to Claimants The Isherwood Trust C, by and through its Co-Trustee and Beneficiary Arlene Isherwood and Temporary Co-Trustee William Isherwood interest in the amount of \$50,000.00;
- (3) That other than forum fees which are specified below, the parties shall each bear their own costs and attorney fees incurred in this matter; and
- (4) That any relief not specifically enumerated is hereby denied with prejudice.

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 ten (10) hearing sessions x \$1,000 = \$10,000 in forum fees. There was one (1) pre-hearing conference x \$300 = \$300. Total forum fees = \$10,300. Pursuant to §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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall refund the remaining portion of the hearing session deposit in the amount of \$700 previously deposited by the Claimants.

Pursuant to §10332(c) of the Code, Respondents are jointly and severally liable for and shall pay forum fees in the amount of \$10,300 (total forum fees).

Pursuant to §10333 of the Code, Respondent Dain Bosworth is liable for its member surcharge in the amount of \$500.

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

Concurring Arbitrators' Signatures:

\s\ Stanley H. Michelstetter, II, Esq.
Stanley H. Michelstetter, II, Esq.
Chairman
Public Arbitrator

April 6, 1998
Dated:

\s\ John Phillip Ryan, Esq.
John Phillip Ryan, Esq.
Panelist
Public Arbitrator

April 3, 1998
Dated:

\s\ Ramona V. Larson
Ramona V. Larson
Panelist
Industry Arbitrator

April 6, 1998
Dated:

For NASD Regulation use only:
Date award served on parties:

April 13, 1998