

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Beth Babich Zielinski

96-04753

Name of Respondents

Quick and Reilly, Inc.;
John A. Masi, Sr.

REPRESENTATION

For Claimant: Beth Babich Zielinski ("Zielinski") was represented by James D. Adducci, Esq. and Marshall L. Blankenship, Esq. of Adducci, Dorf, Lehner, Mitchell & Blankenship, P.C., located in Chicago, Illinois.

For Respondents: Quick and Reilly, Inc. ("Q & R") and John A. Masi, Sr. ("Masi") were represented by Keith Olin, Esq. of Morgan, Lewis & Bockius LLP, located in Miami, Florida.

CASE INFORMATION

Statement of Claim filed: October 26, 1996.

Claimant's Submission Agreement signed on: October 22, 1996.

Statement of Answer filed by Respondents Q & R and Masi on: February 12, 1997.

Respondent Q & R's Submission Agreement signed on: December 31, 1996 by Douglas Flaherty, Assistant Vice President, Quick and Reilly, Inc.

Respondent Masi's Submission Agreement signed on: November 22, 1996.

HEARING INFORMATION

Pre-Hearing Conference: June 13, 1997 for One (1) session (single arbitrator);
August 26, 1997 for One (1) session (single arbitrator).

Hearing Dates/Sessions: October 8, 1997 for Two (2) sessions; and
October 9, 1997 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant alleged that Masi, while employed by or acting as an agent for Q & R, falsely represented the suitability of municipal bonds to Zielinski in order to induce her to purchase the bonds. As alleged in the claim, Zielinski purchased the bonds in October 1995 after Masi represented that the bonds "were backed by the full faith and credit of the State of Illinois" and were suitable for her investment needs. However, the bonds were not backed by the State of Illinois and were not intended for sale to individuals. Instead, sale of the bonds was to be restricted, in minimum quantities of \$250,000.00, to institutional investors who, "in the aggregate, own and invest at least \$100 million in securities of unaffiliated investors." Zielinski lost 75% of the investment in a matter of days during March 1996. Based upon these allegations, Zielinski asserted claims for fraud and misrepresentation; suitability; and failure to supervise.

Respondents denied the material allegations of the Statement of Claim, alleging that Q & R is a discount brokerage which does not offer advice on stock purchases and Claimant was aware of this at the time she executed her account documents. In addition, the value of the bonds plummeted dramatically due to a change in state law and the issuer subsequently defaulted on the bond issue. Respondents also alleged that they became aware of the restrictions on the offering memorandum and the failure of the issuer to obtain a credit rating after the claim was filed. After discovering this information, Respondents offered to cancel the transaction, pay lost interest, and reasonable attorneys' fees, but Claimant refused. Furthermore, Respondents asserted that they supplied all information known to them at the time and did not misrepresent the issue at any time.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for compensatory damages of \$100,634.38; pre-judgment interest; punitive or exemplary damages of \$301,903.14; costs of suit, including attorneys' fees; and such other amounts as the arbitrators deemed appropriate.

Respondents requested that the arbitrators find the claims completely false and without merit.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

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. Respondents Quick and Reilly, Inc. and John A. Masi, Sr. are jointly and severally liable for and shall pay to Claimant Beth Babich Zielinski the sum of \$27,240.00 as actual damages. In addition, Respondent Quick and Reilly, Inc. is liable for and shall pay to the Claimant, Beth Babich Zielinski, the sum of \$54,480.00 as actual damages;
2. Respondents Quick and Reilly, Inc. and John A. Masi, Sr. are jointly and severally liable for and shall pay to Claimant Beth Babich Zielinski the sum of \$11,500.00 as attorneys' fees. In addition, Respondent Quick and Reilly, Inc. is liable for and shall pay to the Claimant, Beth Babich Zielinski, the sum of \$23,000.00 as attorneys' fees. In deciding to award attorneys' fees, the Panel considered the arguments of the parties, as well as the Illinois Securities Laws, and determined that authority existed for an award of attorneys' fees to the Claimant, Beth Babich Zielinski;
3. Respondents Quick and Reilly, Inc. and John A. Masi, Sr. are jointly and severally liable for and shall pay to Claimant Beth Babich Zielinski the sum of \$1188.33 as costs. In addition, Respondent Quick and Reilly, Inc. is liable for and shall pay to the Claimant, Beth Babich Zielinski, the sum of \$2,376.66 as costs;
4. The claims for punitive or exemplary damages are dismissed with prejudice and denied in the entirety;
5. Any additional cost of arbitration, except for those specifically enumerated herein, shall be borne by the party incurring the cost; and
6. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$350.00 member surcharge previously paid by Respondent Quick and Reilly, Inc.

In addition, the NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$750.00 postponement fee previously paid by the Claimant, Beth Babich Zielinski.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) pre-hearing conferences x \$300.00 = \$600.00; Three (3) hearing sessions x \$750.00 per session = \$2,250.00; Total Forum Fees = \$2,850.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 non-refundable filing fee and refund the \$750.00 hearing session deposit previously paid by the Claimant, Beth Babich Zielinski. Respondent Quick and Reilly, Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$2,850.00 as forum fees.

Concurring Arbitrators' Signatures

Name

Date

/s/ Robert S. Sugarman, Esq.
Robert S. Sugarman, Esq.
Public Arbitrator
Chairperson

December 3, 1997

/s/ Joseph O. Kostner, Esq.
Joseph O. Kostner, Esq.
Public Arbitrator

December 3, 1997

/s/ Donald R. Dwyer
Donald R. Dwyer
Industry Arbitrator

December 4, 1997

For ODR Use Only/Date of Decision: December 4, 1997