

## AWARD

**National Association of Securities Dealers Regulation, Inc.  
Office of Dispute Resolution**

**In the Matter of the Arbitration Between**

**Carolyn Dodd,**

**Claimant.**

**Y.**

Case Number 96-04831

**Royal Alliance Associates, Inc.  
and Francis Kelly,**

### Respondents.

## REPRESENTATION OF PARTIES

Claimant, Carolyn Dodd was represented by Gary Barket, Esquire and Charles Darwin "Skip" Davidson, Esquire of The Davidson Law Firm, Ltd. located in Little Rock, Arkansas.

Respondents, Royal Alliance Associates, Inc. and Francis Kelly were represented by Michael Schwartzberg, Esquire of Luboja & Thau, LLP located in New York, New York.

### CASE INFORMATION

**Claimant, Carolyn Dodd's Statement of Claim was filed on or about October 30, 1996.**

The Submission Agreement of Claimant, Carolyn Dodd was signed on October 29, 1996.

The Respondents, Royal Alliance Associates, Inc. and Francis Kelly's joint Statement of Answer was filed on or about January 17, 1997.

The Submission Agreement of Respondent, Royal Alliance Associates, Inc. was signed on November 21, 1996 by Barbara McInerney, Senior Vice President and General Counsel.

**The Submission Agreement of Respondent, Francis Kelly was signed on January 2, 1997.**

## HEARING INFORMATION

The hearing was held on: June 11, 1997 for two (2) sessions;  
June 12, 1997 for two (2) sessions; and  
June 13, 1997 for one (1) session.

The hearing was held in: Little Rock, Arkansas.

### CASE SUMMARY

In the Statement of Claim, Carolyn Dodd ("Claimant") sought to recover monies for losses sustained in her individual account and her IRA account as a result of Royal Alliance Associates, Inc. ("Royal Alliance") and Francis Kelly ("Kelly") (hereafter collectively referred to as "Respondents") allegedly making unsuitable recommendations, breaching their fiduciary duty and violations of Rules 2120, IM-2310-2 and 3010 NASD-Conduct Rules.

Carolyn Dodd, at the time of opening her account in December of 1990, was 52 years of age, a recent divorcee, was unsophisticated about investments and had little or no knowledge of the securities industry. According to Claimant, she informed Kelly at their initial meeting in December of 1990 that she wanted low-risk, liquid investments and that her \$250,000 divorce settlement (approximately \$50,000 in an IRA and \$200,000 in a personal account at Stephens, Inc.) constituted her sole assets for investing. Claimant alleged that Kelly during their first meeting not only told her it was dangerous to keep her accounts at Stephens, Inc. but also failed to discuss projected modifications to her financial status, changes in the amounts of money for investments or portfolio strategy. Claimant contended that Kelly knew or should have known her age, her affliction with rheumatoid arthritis for which she was under medication, her reliance on alimony income of \$21,600 per annum and other information about Claimant and her finances. As an immediate result of the first meeting and on December 18, 1990, Claimant signed account papers, an IRA application, an IRA investment authorization, a Resources Trust Company transfer letter, a Customer Agreement and a Customer Security Cash Margin Account document. Based upon Kelly's recommendation, Claimant invested \$30,000 of her non-IRA assets representing 20% of her liquid assets in two limited partnerships - \$15,000 in Boston Capital Credit Tax Credit Fund II Limited Partnership ("BCTC II-10") and \$15,000 in Diversified Historic Investors 90 Limited Partnership ("DHI-90"). Claimant asserted that Kelly did not explain the risks associated with limited partnerships, did not deliver a private placement memorandum or any sales material to her and failed to disclose material facts. Claimant signed the subscription agreements for the partnerships after Kelly allegedly stated that the limited partnerships were as safe or safer than the securities in which the Claimant was invested. Subsequent to the initial meeting, Kelly allegedly recommended the following unsuitable transactions: (1) On February 12, 1991, \$1,577 in PLM Equipment Growth Fund II Equipment Leasing in her IRA; (2) On February 24, 1992, \$30,000 in Technology Funding Venture Partners V in her IRA; (3) On June 20, 1992, \$5,000 in Swift Energy Limited Partnership 92-B in her IRA; and (4) On May 6, 1993, \$15,000 in Boston Capital Tax Fund III-17. As alleged, a total of \$81,577 of Claimant's assets, representing 33% of the individual account and over 65% of the IRA, was invested in illiquid, high-risk limited partnerships which were unsuitable for Claimant while Claimant's other assets were invested in equities, equipment leases, mutual funds and annuities. Claimant asserted that as a result of the inappropriate and unsuitable investment recommendations and recommending purchases beyond Claimant's capability, Claimant sustained damages and losses in excess of \$81,577. Claimant further

asserted that Royal Alliance was liable for the actions of Kelly under the theories of agency and control person liability.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated

Respondents made the following affirmative defenses: (1) The Respondents did not guarantee Claimant's returns on any investments. (2) Claimant contributed to and/or assumed the risk of her alleged losses, the existence of which Respondents continued to deny. (3) Any losses Claimant sustained, if any, resulted solely from the vagaries and volatilities of the securities markets, and not from any purported wrongdoing by the Respondents. (4) Royal Alliance fully complied with all applicable rules and regulations regarding the supervision of Claimant's account. (5) Claimant's investment portfolio must be considered in its entirety, and not just with respect to selected investments with which Claimant might be unhappy. (6) Claimant's recovery herein, if any, must be offset by all distributions and other gains on the investments that she made -- gains which, incidentally, also had not been referred to in her Statement of Claim. (6) Any recovery should be offset by the amount of tax credits and deductions available to Claimant based on the subject limited partnerships.

#### **RELIEF REQUESTED**

In the Statement of Claim, Carolyn Dodd requested an award for compensatory damages in the amount of \$81,577.41 or, in the alternative, rescission; pre-award and post-award interest; and undisclosed amount of punitive damages; costs; and attorney's fees.

Respondents, Royal Alliance Associates, Inc. and Francis Kelly requested that the claims asserted against them be denied in their entirety.

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

The parties have agreed that a handwritten, signed Award may be entered. 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. That Royal Alliance Associates, Inc. is liable for and shall pay to Carolyn Dodd \$14,317.17 in actual damages;

2. That Royal Alliance Associates, Inc. and Francis Kelly are, jointly and severally, liable for and shall pay to Carolyn Dodd \$14,317.16 in actual damages;
3. That Royal Alliance Associates, Inc. is liable for and shall pay to Carolyn Dodd \$6,000 in attorney's fees;
4. That Royal Alliance Associates, Inc. and Francis Kelly are, jointly and severally, liable for and shall pay to Carolyn Dodd \$6,000 in attorney's fees. In deciding to award attorney's fees, the arbitrators considered the pleadings, the testimony and the evidence presented by the parties;
5. Other than forum fees which are specifically addressed below, the parties shall bear their own costs; and
6. Any relief not specifically granted herein is hereby denied in its entirety and dismissed with prejudice.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were five (5) sessions x \$500 = \$2,500 in total forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure ("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, the NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Carolyn Dodd.

Pursuant to § 10332(c) of the Code, Carolyn Dodd is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution \$750 in additional forum fees.

In accordance with § 10332(c) of the Code, Royal Alliance Associates is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution \$625 in forum fees.

In accordance with § 10332(c) of the Code, Royal Alliance Associates and Francis Kelly are, jointly and severally, liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution \$625 in forum fees.

Pursuant to § 10333 of the Code, Royal Alliance Associates, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution \$300 for its member surcharge.

**Fees are payable to the National Association of Securities Dealers Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures:

W. Bradford Sherman, Esquire  
W. Bradford Sherman, Esquire  
Public Arbitrator  
Presiding Chair

July 14, 1997  
Dated:

Charles C. Sisney  
Charles C. Sisney  
Public Arbitrator  
Panelist

July 14, 1997  
Dated:

George C. Bolton, Jr.  
George C. Bolton, Jr.  
Industry Arbitrator  
Panelist

July 14, 1997  
Dated:

For NASD Regulation, Inc. use only:  
Date served: July 24, 1997