

NASD REGULATION, INC. AWARD**Office of Dispute Resolution**

In the Matter of the Arbitration Between

Names of Claimants

Kenneth W. Brown
Wendy W. Brown

Case No. 96-04909

Names of Respondents

Winthrop Securities Co., Inc.
Jonathan Wexler
Bert J. Gilbert
Charles K. Levy
Ronald E. Millard, Jr.
Lee Roeder
Thomas Trkla

REPRESENTATION OF PARTIES

For Claimants: Russell L. Forkey, Esq. of the law firm of Russell L. Forkey, P.A.,
Lauderdale, FL.

For Respondents: Barbara L. Moore, Esq. and John J. Tumilty, Esq. of the law firm of
Cooley, Manion, Moore & Jones, LLP, Boston, MA.

CASE INFORMATION

Claimants' Statement of Claim was filed on October 30, 1996 and an Amended
Statement of Claim was filed on April 4, 1997. Claimants' Submission Agreement was
signed on October 30, 1996.

Statement of Answer and Motion to Dismiss was filed by Respondents on August 13,
1997. Respondents' Submission Agreements were signed on July 24 and July 28,
1997.

HEARING INFORMATION

A telephonic pre-hearing conference to address Respondents' Motion to Dismiss was
conducted on March 19, 1998 with the full panel presiding.

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CASE SUMMARY

Claimants alleged the following: Respondents committed fraud and deceit, negligence, breach of fiduciary duties, breach of contract and negligent and/or fraudulent marketing in connection with an Offering Memorandum and sales literature provided to Ken Brown. The materials were provided to Mr. Brown in his capacity as a placing broker through his firm Brown & Hawk, Inc. and/or K.W. Brown Investments. Mr. Brown relied on the materials, including an indemnification clause in section 9(a) of the agency agreement, in recommending the purchase of 2.5 units of a proprietary limited partnership to his clients.

Respondents specifically denied the allegations set forth in the Amended Statement of Claim. Respondents also asserted the following affirmative defenses: ineligibility of the Claimants' claims for submission to arbitration under Rule 10304 of the Code of Arbitration Procedure ("Code"); statute of limitations; failure to state a cause of action; failure to comply with applicable contract terms; failure to plead with specificity; nonexistence of any agreement, contract or duty between the Respondents and Claimants; lack of standing by Wendy Brown; failure of Claimants to attach supporting documents to their Amended Statement of Claim as required by Rule 10314(a) of the Code; lack of NASD jurisdiction; responsibility of Claimants for their own actions and misrepresentations as a bar to their pursuit of their purported claims against the Respondents; laches; and, lack of the making or providing of any misrepresentations or false statements by the Respondents. In addition to denying Claimants' allegations, Respondents moved to dismiss Claimants' claims with prejudice. See Other Issues, below.

RELIEF REQUESTED

Claimants requested an award of compensatory damages in the amount of \$160,000.00, interest, costs and punitive damages.

Respondents requested that the claims asserted against them be dismissed with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

1. In addition to denying Claimants' allegations, Respondents moved to dismiss Claimants' claims with prejudice. Respondents argued that Rule 10304 of the Code

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barred Claimants' claims from eligibility for submission to NASD arbitration and that applicable statutes of limitation also barred Claimants' claims. Claimants filed a Response to Respondents' Motion to Dismiss arguing that Respondents' Motion to Dismiss should not be granted on two grounds: 1) indemnification was sought within the six year period preceding filing of the action; and, 2) the applicable statute was tolled by fraudulent concealment. Respondents filed a Reply to the Response.

2. A hearing on Respondents' Motion to Dismiss was held on March 19, 1998 at 2:00 p.m. Following the hearing, the Arbitration Panel held an executive session to consider the issues raised in Respondents' Motion to Dismiss, the positions of the parties and the support therefor. At the conclusion of the Arbitration Panel's executive session on March 19, 1998, the Panel contacted the parties and informed them that the Panel was granting the Respondents' Motion to Dismiss in its entirety.

AWARD

After considering the pleadings, the written submissions supporting and in opposition to the Respondents' Motion to Dismiss, and the oral arguments presented at the pre-hearing conference on March 19, 1998, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. This matter is ineligible for submission to arbitration before NASD Regulation, Inc. under Rule 10304 of the Code;
2. The claims set forth in Claimants' pleadings are also barred by the applicable statute of limitations;
3. Respondents' Motion to Dismiss is granted in its entirety;
4. Claimants' claims are dismissed with prejudice; and,
5. Claimants' requests for costs and punitive damages are denied.

FORUM FEES

Pursuant to Rule 10205(b) of the Code, a hearing session is any meeting between the

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parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10205(c) of the Code, the panel has assessed forum fees in the amount of \$1,500.00 (two prehearing conferences x \$750.00 per session).

1. Claimants are assessed the sum of \$1,500.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. in the sum of \$750.00.

2. NASD Regulation, Inc. shall retain the claim filing fee of \$500.00 paid by the Claimants.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Jonathan Parker, Industry Arbitrator,
Presiding Chair

/s/

Peter Brown, Industry Arbitrator

/s/

David Levine, Industry Arbitrator

Date of Decision: 4-22-98