

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Jan and Patricia VanVoorhis,

Claimants,

v.

No. 96-05123

Bentley-Lawrence Securities, Inc.,  
and Larry VanBuskirk,

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimants Jan and Patricia VanVoorhis ("Claimants") were represented by Gary M. Saretsky, Esq. and Karen A. Gould, Esq. of Hertz, Schram & Saretsky, P.C. located in Bloomfield Hills, Michigan.

Respondent Bentley-Lawrence Securities, Inc. ("Bentley-Lawrence") was represented by Marvin I. Horowitz, Esq. of Law Offices of Marvin I. Horowitz, P.C. located in Farmington Hills, Michigan.

Respondent Larry VanBuskirk ("VanBuskirk") appeared pro se.

### **CASE INFORMATION**

The Statement of Claim was filed on or about November 15, 1996.

Claimants' Submission Agreement was signed on November 11, 1996.

The Statement of Answer of Bentley-Lawrence was filed on or about February 24, 1997.

The Submission Agreement of Bentley-Lawrence was signed on February 10, 1997.

The Statement of Answer of VanBuskirk was filed on or about September 9, 1997.

Respondent VanBuskirk did not file a properly executed Submission Agreement.

### HEARING INFORMATION

The telephonic pre-hearing conferences were held on October 16, 1997 for one (1) session and June 5, 1998 for one (1) session.

The hearing was held on July 7, 1998 for two (2) sessions; July 8, 1998 for two (2) sessions; and September 10, 1998 for two (2) sessions. The hearing was held in Southfield, Michigan.

### CASE SUMMARY

Respondent Bentley-Lawrence is a broker-dealer registered with the National Association of Securities Dealers, Inc. Respondent VanBuskirk was a registered representative of Bentley-Lawrence. Respondent VanBuskirk serviced the Claimants' account at Bentley-Lawrence.

In the Statement of Claim, Claimants alleged that Respondents Bentley-Lawrence and VanBuskirk (collectively referred to as "Respondents") made the following investments which were unsuitable for Claimants in light of their financial situation and investment objectives and which were the subject of material misrepresentations and omissions which induced their purchase: Citi-Purdue Partners Limited Partnership for \$18,881; First Secured Mortgage Investors XVII Limited Partnership for \$20,000; Quarters Phones of America for \$4,000; American Paytel Corporation for \$2,600; and American Paytel Corporation preferred stock for \$50,000. Claimants contended that Respondents' conduct was inconsistent with the rules of: (1) the NASD and NYSE; (2) the Securities Exchange Act of 1934; (3) the Michigan Uniform Securities Act; and (4) the common law doctrines of fraud/misrepresentation, breach of fiduciary duties, and negligence.

Respondent Bentley-Lawrence denied all liability to Claimants in its Statement of Answer. Bentley-Lawrence alleged that Claimants' losses resulted from either their own independent investment decisions and/or market forces. Bentley-Lawrence contended that Claimants were financially qualified investors with an annual income in excess of \$50,000, and a net worth in excess of \$100,000. Bentley-Lawrence alleged that Claimants were fully aware at the time they made their investments of the risks associated with the investments and voluntarily assumed

those risks. Bentley-Lawrence asserted that the limited partnership investments at issue were forced into bankruptcy as a result of the fraudulent activity of its principal. Bentley-Lawrence denied that the purchase of the other investments constituted the purchase of securities. Bentley-Lawrence contended that it cannot be held responsible either for investments that failed as the result of subsequent fraudulent activities by a principal in the investment or for business transactions not involving the sale of securities.

Respondent VanBuskirk also denied all liability to Claimants in his Statement of Answer. VanBuskirk contended that Citi-Purdue Partners Limited Partnership returned much of Claimants' original investment through tax credits, and may remain a viable investment. VanBuskirk denied that he solicited Claimants' investment in First Secured Mortgage Investors XVII Limited Partnership. VanBuskirk asserted that American Paytel Corporation offered to repurchase all stock from Claimants, but only repurchased \$40,000 of the stock because Claimants insisted on retaining \$10,000 of the stock to hold long term.

#### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested the principal amount of \$55,481, plus an award of lost opportunity costs, as well as interest and attorney fees associated with this arbitration.

In the Statement of Answer, Bentley-Lawrence requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs.

At hearing, VanBuskirk requested that the Statement of Claim be dismissed in its entirety with prejudice.

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

Claimants' Motion to Amend the Statement of Claim was denied.

Respondent VanBuskirk did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 Bentley-Lawrence Securities, Inc. and Larry VanBuskirk are jointly and severally liable for and shall pay to Claimants Jan and Patricia VanVoorhis compensatory damages in the amount of \$135,000.00;
- (2) That Respondent Larry VanBuskirk is individually liable for and shall pay to Claimants Jan and Patricia VanVoorhis additional compensatory damages in the amount of \$14,900.00;
- (3) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (4) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied 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 six (6) hearing sessions x \$500 = \$3,000 in forum fees. There were two (2) pre-hearing conferences x \$300 = \$600 in forum fees. Total forum fees = \$3,600. Pursuant to Rule10332(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 Rule10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall refund the hearing session deposit in the amount of \$500 previously deposited by the Claimants.

Pursuant to Rule10319 of the Code, Claimants and Respondent Bentley-Lawrence are liable for postponement fees in the amount of \$500 resulting from the Joint Motion for Postponement.

Pursuant to Rule10332(c) of the Code, Respondents are jointly and severally liable for and shall pay all forum fees in the amount of \$3,600.

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

Concurring Arbitrators' Signatures:

/s/ Michael B. Laikin, Esq.  
Michael B. Laikin, Esq.  
Chairperson  
Public Arbitrator

September 28, 1998  
Dated:

/s/ David E. Nims, III, Esq.  
David E. Nims, III, Esq.  
Panelist  
Public Arbitrator

September 29, 1998  
Dated:

/s/ Conrad W. Koski  
Conrad W. Koski  
Panelist  
Industry Arbitrator

October 5, 1998  
Dated:

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

October 7, 1998