

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

CASE: 96-05408

Margalee Magoon, claimant v. The Ohio Company, respondent.

ATTORNEYS:

For Claimant

Claimant appeared pro se - Lansing, MI.

For Respondent appeared Gregory J. Betchkal - Columbus, OH.

DATE FILED: 12/6/96.

CASE SUMMARY: Claimant alleged unsuitability and fraud in the management an investment in a Phoenix Leasing limited partnership.

Claim Data

Claim: \$7,922.00

Punitive: \$.00

Atty Fees: \$.00

Filing Fees: \$.00

Other: \$.00

Award Data

Award: \$.00

Punitive: \$.00

Atty Fees: \$.00

Filing Fees: \$.00

Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of claimant are dismissed in their entirety pursuant to Rule 10304 of the NASD Code of Arbitration Procedure. 2) All other requests for relief are denied. 3) The \$150.00 filing fee previously deposited by the claimant with the National Association of Securities Dealers Regulation, Inc. shall be retained by NASD Regulation, Inc.

ARBITRATOR'S REPORT: I have reviewed the Claimant's Statement of Claim. The Respondent's letter dated January 17, 1997, the Claimant's response to the letter dated February 15, 1997, and the Respondent's Answer to Statement of Claim and Affirmative Defenses. I shall treat the letter of January 17, 1997 as Respondent's Motion for Summary Disposition.

The NASD Code of Arbitration Procedure provides that:

10304. Time limitation Upon Submission

No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy. This Rule shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

Claimant's Statement of Claim and the responsive letter taken as a whole state two (2) theories of recovery: unsuitability and fraud. To the extent that the claim is based upon unsuitability, the time for filing a claim for arbitration would have expired no later than August 17, 1993 six (6) years following the settlement date of the purchase of the limited partnership units. Claimant seems to be agreeing that the unsuitability claim is time-barred in her responsive letter;

I don't feel that the six (6) year Statute of Limitations applies in this case, because it was not only an unsuitable trade, but there was fraud involved, which has no statute of limitations.

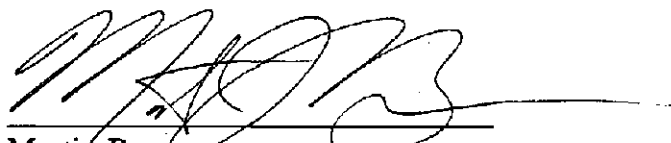
Claimant states that there is no statute of limitations for claims based upon fraud. I have reviewed the Code and have found no such modification to the six (6) year limitation found in Rule 10304. The Michigan Uniform Securities Act provides that an action brought under section 410(a)(2) of the act must be brought by the earlier of two (2) years from the date of discovery of the alleged untrue statement of material fact or omission to state a material fact or four (4) years from the date of the contract for sale.

Page Three (3) of Exhibit A to Claimant's Statement of Claim shows that as early as October 31, 1988, she was making inquiry relative to the self-liquidating nature of the distribution; the response to which was presumably Mr. Thayer's alleged mis-statement that the distributions "were all interest." The statute of limitations would have begun to run at that time and would have expired no more than six (6) years later (MCLA 600.5813, NASD Code 10304).

The Claimant's case is dismissed in its entirety as time-barred. Each party to bear its own costs.

AFFIRMATION

I, Martin Brosnan, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Martin Brosnan

June 25, 1997

Date of award