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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Margie J. Bowen,

Claimant,

and

No. 96-05432

Norwest Investment Services, Inc., Dwight Wrich,
Margo Woods, Todd Davis, Sara Masters,
Brent W. Mueller, and Sandy Lippe,

Respondents.

REPRESENTATION OF PARTIES

Claimant, Margie J. Bowen, was represented pro se.

Respondents, Norwest Investment Services, Incorporated, Dwight Wrich, Margo Woods, Todd Davis, Sara Masters, Brent W. Mueller, and Sandy Lippe, were represented by Steven E. Rau, Esquire of Rau & Floyd, P.L.L.P., located in Minneapolis, Minnesota.

CASE INFORMATION

Margie J. Bowen's Statement of Claim was filed on or about December 1, 1996.

Margie J. Bowen's Submission Agreement was signed on December 2, 1996.

Norwest Investment Services, Incorporated, Dwight Wrich, Margo Woods, Todd Davis, Sara Masters, Brent W. Mueller, and Sandy Lippe's Statement of Answer was filed on or about February 4, 1997.

Norwest Investment Services, Incorporated's Submission Agreement was signed on February 4, 1997 by Mark T. Lasswell, Senior Vice President / Dir. Compl. of Norwest Investment Services, Inc.

Dwight Wrich's Submission Agreement was signed on July 1, 1997.

Margo Woods' Submission Agreement was signed on July 1, 1997.

The NASD Regulation, Incorporated Office of Dispute Resolution has no record of a properly executed submission agreement by Todd Davis.

Sara Masters' Submission Agreement was signed on July 3, 1997.

Brent W. Mueller's Submission Agreement was signed on July 23, 1997.

Sandy Lippe's Submission Agreement was signed on July 1, 1997.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on June 25, 1997 for two (2) hearing sessions.

The hearing was held in Omaha, Nebraska.

CASE SUMMARY

Claimant, Margie J. Bowen ("Claimant"), brought this action to recover losses allegedly suffered from an error in the liquidation of her 401-k plan by Mr. Dwight Wrich ("Mr. Wrich"), Assistant Vice President and Financial Advisor of Norwest Investment Services, Incorporated ("Norwest Investment").

Claimant stated that after being employed with Norwest Bank Nebraska for almost 28 years, she left her position in March 1995, but decided to leave the management of her 401-k plan with Norwest Corporation. According to Claimant, on September 30, 1995, her 401-k account had a balance of \$214,649.58 with \$114,914.11 in the Norwest ESOP Account, \$107.85 in the Managed Fixed Income Fund and \$97,627.52 in the Stable Return Fund. Claimant stated that in October of 1995 Mr. Wrich contacted her and informed her that Norwest Corporation had decided not to let individuals who were no longer employed by them to reinvest their dividends in their Norwest ESOP account. Claimant further stated that Mr. Wrich advised her to roll her 401-k into a self directed IRA account with him at Norwest Investment Services, Incorporated ("Norwest Investment") and informed her that the dividends earned on the Norwest Corporation stock could be tax deferred until she retired. Claimant asserted that she informed Mr. Wrich that she did not want to liquidate her Norwest Stock, and that she was informed by Mr. Wrich that this would not be a problem because the portion of her 401-k that was in the Norwest ESOP Account could be made in a distribution of Norwest stock certificates. Claimant stated that she met with Margo Woods, Mr. Wrich's assistant, on October 20, 1995 and signed some forms to effectuate this distribution.

Claimant reported that on December 8, 1995 she received a check in the mail for \$202,471.84 payable to Norwest Bank SDIRA, Custodian F/B/O Margie J. Bowen and an additional check for \$1,903.24 payable to just her. Claimant asserted that Mr. Wrich confirmed to her verbally that he knew the distribution had not been completed according to her instructions and that there must have been an error on the form. Later, Claimant added, Mr. Wrich informed her that his manager, Mr. Todd Davis, suggested that she try to resolve this issue with the employee benefit department of Norwest Corporation. Claimant then stated that she contacted Ms. Sara Masters, Senior Vice President of the Human Resources Department of Norwest Bank Nebraska requesting action, but later only received a letter from Mr. Brent W. Mueller, manager of Retirement Plans for Norwest Corporation, who informed her that the distribution could not be reversed. Claimant stated that she then contacted Mr. Todd Davis again and was informed that he had forwarded Claimant's correspondence to a Ms. Sandy Lippe who worked for Norwest Investment. According to Claimant, Ms. Sandy Lippe informed her that she had never received any of the correspondence. Claimant asserted that on September 30, 1995 her 401-k account had 3,597.3570 shares of Norwest Corporation stock valued at \$32.50 per share for a total of \$116,914.11, which was liquidated at \$29.50 per share as a result of Norwest Investment's error. Claimant also asserted a loss of interest, dividends, and appreciation on the Norwest Corporation stock, as well as a loss of interest on her cash account.

Respondents, Norwest Investment, Mr. Wrich, Ms. Margo Woods, Mr. Todd Davis, Ms. Sara Masters, Mr. Brent W. Mueller, and Ms. Sandy Lippe (hereinafter collectively referred to as "Respondents"), denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on their part. Respondents stated that Claimant had the opportunity to review the form before signing and acknowledging it and was capable of understanding what she was doing when she executed the "Qualified Retirement Plan One Time Payment Request" on or about October 20, 1995. According to Respondents, the acknowledgment states "I hereby request a distribution from my account on the terms stated above," and all 401-k participants had been advised previously that if an in-kind stock distribution was not specifically elected on a distribution form, the "default" distribution was in cash. Respondents further contended that federal regulations provide that any distribution is irrevocable. Respondents asserted the following affirmative defenses: (1) Claimant's Statement of Claim failed to state any viable, legal basis that would give rise to liability; (2) Claimant failed to mitigate her damages; and (3) Claimant's claims were barred by accord and satisfaction.

RELIEF REQUESTED

Claimant, Margie J. Bowen, requested an award for compensatory damages in the amount of \$69,482.65.

Respondent, Norwest Investment Services, Incorporated, Dwight Wrich, Margo Woods, Todd Davis, Sara Masters, Brent W. Mueller, and Sandy Lippe, requested that the claims asserted against them be dismissed and that they be awarded their costs and attorney's fees.

OTHER ISSUES CONSIDERED AND 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 original(s) remain 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Norwest Investment Services, Incorporated is liable for and shall pay to Margie J. Bowen the sum of \$76,667 in compensatory damages;
2. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied 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 no pre-hearing conferences and there were two (2) hearing sessions x \$500 = \$1,000 in 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, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$150 and shall retain as forum fees the hearing session deposit of \$500 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Margie J. Bowen.

Pursuant to § 10333 of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable member surcharge of \$300 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Norwest Investment Services, Incorporated.

Pursuant to § 10332(c) of the Code, Norwest Investment Services, Incorporated is liable for and shall

pay to Margie J. Bowen the sum of \$500 as reimbursement of the hearing session deposit. In addition, Norwest Investment Services, Incorporated is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the amount of \$500 in forum fees.

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

Concurring Arbitrators' Signatures

Richard A. Knudsen
Richard A. Knudsen
Chairperson
Public Arbitrator

August 21, 1997
Dated:

James R. Baratta
James R. Baratta
Panelist
Public Arbitrator

August 20, 1997
Dated:

Ramona V. Larson
Ramona V. Larson
Panelist
Industry Arbitrator

August 18, 1997
Dated:

For NASD use only:

Date Award was served on the parties: August 26, 1997