

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Donald Krekelberg,
Bernette Krekelberg,
Evelyn C. Ternus by POA, and
Judy Adams

and

98-00019

Name of Respondents

The Equitable Life Assurance Society of the United States
Ansula Liu
Emphasys, Inc.
Pioneer Consulting & Technology, Inc.

REPRESENTATION OF PARTIES

Donald Krekelberg, Bernette Krekelberg, Evelyn C. Ternus by POA and Judy Adams (collectively as "**Claimants**") were represented by Jerome S. Rice, Esq., Mahoney, Hagberg & Rice, Wayzata, Minnesota.

The Equitable Life Assurance Society of the United States ("**Respondent Equitable**") was represented by Clarence L. Pozza, Esq., Miller, Canfield, Paddock & Stone, P.L.L.P., Detroit, Michigan.

Ansula Liu ("**Respondent Liu**") was represented by Garnett Blanchfield, Esq., Reinhardt & Anderson, St. Paul, Minnesota.

Emphasys, Inc. ("**Respondent Emphasys**") and Pioneer Consulting & Technology, Inc. ("**Respondent Pioneer**") were represented by Gregg B. Nelson, Esq., Nelson Law Offices, North Oaks, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about January 2, 1998. Claimants' memorandum of law in Opposition to Respondent Ansula Liu's Motion to Dismiss was filed on or about June 15, 1998. Submission Agreements of Claimants Donald Krekelberg, Bernette Krekelberg, Evelyn C. Ternus by POA and Judy Adams were signed on December 18, 1997.

Statement of Answer on Behalf of Equitable Life, Equitable's Cross Claim Against Liu and Third Party Complaint Against Emphasys and Pioneer was filed by Respondent The Equitable Life Assurance Society of the United States on or about April 1, 1998. Submission Agreement of Respondent The Equitable Life Assurance Society of the United States was signed on March 31, 1998 by Eileen Wishnia.

Motion to Dismiss or in the Alternative Statement of Answer of Respondent Ansula Liu was filed on or about June 2, 1998.

Motion for Dismissal or in Lieu thereof, Statement of Answer to Petition and "Third Party Complaint" of Pioneer Consulting & Technology, Inc. and Emphasys, Inc. was filed by Respondents Emphasys, Inc. and Pioneer Consulting & Technology, Inc. on or about June 3, 1998.

HEARING INFORMATION

The hearing was held on April 21, 1999 in Minneapolis, Minnesota for a total of three (3) sessions.

CASE SUMMARY

Claimants alleged that Respondent Liu made material misrepresentation in connection with the purchase of stock in Emphasys, Inc. Claimants specifically alleged that Respondent Liu falsely misrepresented the soundness of the investment; failed to disclose the risks associated with the investment; and failed to disclose her conflict of interest. It was alleged that the actions of Respondents constituted: breach of fiduciary duty; violations of federal and state securities laws; common law fraud; violation of Consumer Fraud Act, Minn Stat. §325F.68, *et seq.*; violation of Uniform Deceptive Trade Practices Act, Minn. Stat. §325D.43, *et seq.*; and liability of Respondent Access under the doctrine of *respondeat superior*.

Respondent Liu denied the allegations of wrongdoing set forth in the Statement of Claim. It was stated that Claimants were experienced investors very familiar with private placements, having invested in several. Respondent Liu stated that she was not a registered representative of any member firm of the NASD at the time the transactions complained of in this matter took place. It was stated that in connection with the private placement, she had no personal interest in the success of the investment, did not earn a commission in connection with the investment, and had no equity in the company.

RELIEF REQUESTED

Claimants requested an award of compensatory damages in an amount in excess of \$250,000.00; a tripling of the compensatory damages award, or such larger sum as the arbitrators deem just, under the Minnesota punitive damages law, the Minnesota double and triple damage theft statutes;

reasonable attorneys' fees, as required by the Minnesota Securities laws, the Minnesota Treble Damage Theft Statute, and Minnesota Statutes Chapters 325D and 325F; interest; costs, disbursements and expenses incurred in pursuing this arbitration; and for such other relief as the arbitrators shall deem just and equitable.

Respondent Liu respectfully requested that the panel of arbitrators award her attorneys' fees incurred in connection with this matter, together with all costs and expert witness fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Ansula Liu did not file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD") a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 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.

By letter dated March 16, 1999, the parties were advised of the Arbitration Panel's ruling on the Motion to Amend Statement of Claim to Add New Claimant and the Motion for Dismissal or in Lieu thereof, Statement of Answer to Petition and "Third Party Complaint" of Pioneer Consulting & Technology, Inc. and Emphasys, Inc. After considering the submissions of the parties and the pleadings, the panel denied the Motion to Amend Statement of Claim to Add New Claimant and granted the Motion for Dismissal.

The Arbitration Panel was advised that claimants had reached a settlement of claims with The Equitable Life Assurance Society of the United States prior to the commencement of the hearing on the merits. The Equitable Life Assurance Society of the United States withdrew its Cross Claim against Respondent Ansula Liu.

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.

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. Respondent Ansula Liu shall be and hereby is liable for and shall pay to the Claimants Donald and Bernette Krekelberg the total sum of \$10,000.00 (Ten Thousand Dollars) as

compensatory damages. This award is not to be offset by any sums previously paid to the Claimants pursuant to the settlement agreement with Respondent Equitable.

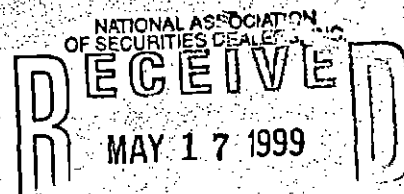
2. Respondent Ansula Liu shall be and hereby is liable for and shall pay to the Claimant Judy Adams the sum of \$5,000.00 (**Five Thousand Dollars**) as compensatory damages. This award is not to be offset by any sums previously paid to the Claimants pursuant to the settlement agreement with Respondent Equitable.
3. Respondent Ansula Liu shall be and hereby is liable for and shall pay to the Claimants Donald Krekelberg, Bernette Krekelberg, and Judy Adams the sum of \$7,500 (**Seven Thousand Five Hundred Dollars**) as attorneys' fees. In making this award of attorneys' fees, the undersigned arbitrators have considered the pleadings, the evidence presented on behalf of the parties, and the arguments made on behalf of the parties and find that they have the authority to award attorneys fees. This award is not to be offset by any sums previously paid to the Claimants pursuant to the settlement agreement with Respondent Equitable.
4. The Motion For Sanctions filed on behalf of Respondent Ansula Liu is granted. Claimants Donald Krekelberg, Bernette Krekelberg, and Judy Adams shall be and hereby are jointly and severally liable for and shall pay to Respondent Ansula Liu a sum equal to 25% of all attorneys fees incurred in defending this matter. Attorneys' fees are to be determined by the submission of an affidavit of attorneys fees by Garnett Blanchfield, Esq. to Claimants' attorney. This award of attorneys' fees is not to exceed the sum of \$7,500.00 (**Seven Thousand Five Hundred Dollars**).
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees not identified above.

FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were three (3) sessions x \$1,000.00 = \$3,000.00 in forum fees. Pursuant to Rule 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 Rule 10332(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimants. Claimants Donald Krekelberg, Bernette Krekelberg, and Judy Adams shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$500.00 as additional forum fees. Respondent Ansula Liu shall

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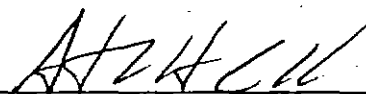
be and hereby is liable for and shall pay to the NASD the sum of \$1,500.00 as the balance due for forum fees.

OTHER FEES

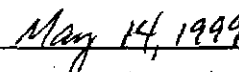
Pursuant to Rule 10333 of the Code, Respondent Equitable has paid to the NASD the member surcharge in the amount of \$2,000.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent Equitable has paid to the NASD the process fees in the total amount of \$4,100.00 previously invoiced.

The NASD shall waive postponement fees in the amount of \$1,000.00 assessed in this matter, if any. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:



Arthur H. Cobb
Public Arbitrator, Presiding Chair



Mary 14, 1999

John J. Doherty, Esq.
Public Arbitrator

Lawrence Walter Carlsen
Industry Arbitrator

NATIONAL ASSOCIATION
OF SECURITIES DEALERS, INC.
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NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 98-00019
Award Page 5 of 5

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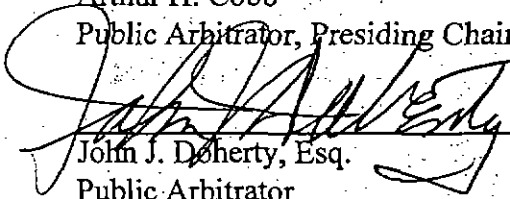
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Dated:

Arthur H. Cobb
Public Arbitrator, Presiding Chair


John J. Doherty, Esq.
Public Arbitrator

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May 27, 1999

Lawrence Walter Carlsen
Industry Arbitrator

** While I do not have any dispute with the Award as above set forth, I do not believe it goes far enough in respect to the Claimant's claims.

Public Arbitrator, Presiding Chair
Arthur H. Cobb

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OTHER FEES

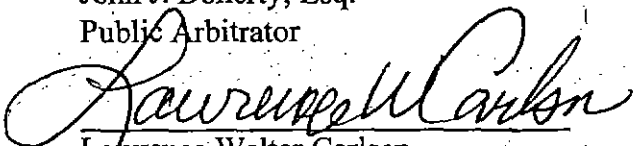
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Dated:

Arthur H. Cobb
Public Arbitrator, Presiding Chair

John J. Doherty, Esq.
Public Arbitrator



Lawrence Walter Carlsen
Industry Arbitrator

5/14/99
