

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

George Sers

Case No. 99-00129

Names of Respondents

Thos. K. Wasserman & Associates Incorporated
Thomas K. Wasserman
Alfred Wilfred Simoneau

REPRESENTATION OF PARTIES

For Claimant: Lonnie K. Martens, Esq. of Kelley & Warren, P.A., West Palm Beach, FL.

For Respondents Thos. K. Wasserman & Associates Incorporated ("TKA"), Thomas K. Wasserman ("Wasserman"), and Alfred Wilfred Simoneau ("Simoneau")(hereinafter referred to as "Respondents"): Delmer C. Gowing, III, Esq. of Delmer C. Gowing, III, P.A., Delray Beach, FL.

CASE INFORMATION

Statement of Claim filed on or about January 12, 1999.

Claimant signed the Uniform Submission Agreement on January 4, 1998.

Joint Statement of Answer filed by Respondents on or about March 22, 1999.

Respondent TKA signed the Uniform Submission Agreement on March 1, 1999.

Respondent Wasserman signed the Uniform Submission Agreement on March 1, 1999.

Respondent Simoneau signed the Uniform Submission Agreement on March 1, 1999.

CASE SUMMARY

Claimant alleged the following: Claimant, George Sers, 93 years old, was advised by a friend to contact Simoneau if he was interested in learning about an investment in Keller Financial ("Keller"). Claimant sent a note to Simoneau in January 1996, advising Simoneau that he had \$50,000.00-\$100,000.00 to invest and requesting information on Keller. The letter was sent to Simoneau's previous employer and Simoneau did not receive said letter. Thereafter, Simoneau was advised by a third party that Claimant had attempted to send him a letter. Simoneau initiated contact with Claimant in approximately June 1996.

TKA was a selling agent for Keller. By virtue of its role as selling agent, TKA was

responsible for conducting reasonable due diligence prior to offering the Keller products for sale to its investors. TKA failed in its due diligence obligations. Disclosures made in the prospectus that had been issued prior to Claimant's investments in Keller contradicted TKA's recommendation and endorsement of this investment as suitable for the elderly retirees to whom it was marketed. New account forms and subscription agreements intentionally or negligently concealed Claimant's age and Respondents failed to comply with their own record-keeping rules regarding transactions of this type. Simoneau, as the employee and agent of TKA, took information relating to Keller Mid-Florida notes, to the home of Claimant. Claimant invested \$45,000.00 in the notes. Claimant's stated investment objectives on the new account form were income and safety, however, the Keller notes were risky and illiquid. The second purchase of Keller occurred in August 1996, when Simoneau again visited the Claimant and brought a prospectus and information on Keller Series AA notes. Claimant made a further investment in Keller in the amount of \$145,000.00. In sum, Claimant invested \$190,000.00, the bulk of his net worth, in Keller. At the time the purchases were made, Claimant was 93 years old and mostly deaf. His wife, with whom these transactions were made, died a month after the last Keller transaction.

Prior to the second transaction, Simoneau and Wasserman prepared a letter for execution by Claimant which stated in part "these notes meet our investment objectives." This was a knowingly false statement, prepared by Respondents for Claimant to sign. Respondents prepared this letter in anticipation of foreseeable events and were more interested in protecting themselves than in protecting elderly investors. Keller declared bankruptcy in 1988. The sum of \$57,000.00 was returned to Claimant through the bankruptcy. Furthermore, Claimant received income of \$56,250.00 from Keller prior to the bankruptcy.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following: that Claimant was fully apprised of all of the risks involved in the investments in Keller; that he was advised not to invest as heavily in Keller as he did; that Claimant not only understood the risks involved, but received both a verbal and written warning from Simoneau; and, that despite the foregoing, Claimant invested in Keller.

RELIEF REQUESTED

Claimant requested statutory rescissory damages (pursuant to Florida Statute Section 517) in the amount of \$169,229.21. Claimant further requested a finding of entitlement to attorneys' fees pursuant to Florida Statute Section 517. In addition, Claimant requested costs in the amount of \$3,407.24 and punitive damages in the amount of the commissions earned by TKA (\$229,430.00).

Respondents requested that the Panel dismiss the matter and assess costs and attorneys' fees against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On March 19, 1999, Respondents filed a Motion to Dismiss. Claimant filed a response on March 30, 1999. The Arbitration Panel denied Respondents' Motion on July 19, 1999.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitration Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Thos. K. Wasserman & Associates, Incorporated is liable and shall pay to the Claimant the sum of \$25,000.00.

Respondent Thomas K. Wasserman is liable and shall pay to the Claimant the sum of \$25,000.00.

Respondent Alfred Wilfred Simoneau is liable and shall pay to the Claimant the sum of \$25,000.00.

Respondents are liable, jointly and severally, and shall pay to the Claimant the sum of \$3,407.24 representing reimbursement of Claimant's costs.

Respondents, jointly and severally, shall pay to the Claimant the sum of \$200.00 representing reimbursement of the claim filing fee previously paid by Claimant.

Claimant's other requests including Claimant's requests for a finding of entitlement to attorneys' fee pursuant to Florida Statute Section 517 and punitive damages are denied.

Any and all other relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$ 200.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the

member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Thomas K. Wasserman & Associates, Inc.

| | |
|-------------------------|-------------|
| Member surcharge | = \$1500.00 |
| Pre-hearing process fee | = \$ 600.00 |
| Hearing process fee | = \$2500.00 |

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|--|-------------|
| Two (2) Pre-hearing sessions with Panel x \$750.00 | = \$1500.00 |
| Pre-hearing conference dates: | |
| July 14, 1999 | 1 session |
| September 29, 1999 | 1 session |

| | |
|--------------------------------------|--------------------|
| Four (4) Hearing sessions x \$750.00 | = <u>\$3000.00</u> |
| Hearing Dates: | |
| November 16, 1999 | 2 sessions |
| November 18, 1999 | 2 sessions |

| | |
|------------------|-------------|
| Total Forum Fees | = \$4500.00 |
|------------------|-------------|

The Arbitration Panel has assessed \$4500.00 of the forum fees, jointly and severally, to the Respondents.

Fee Summary

Claimant be and hereby is solely liable for:

| | |
|-----------------------------------|-------------|
| <u>Initial Filing Fee</u> | = \$ 200.00 |
| Total Fees | = \$ 200.00 |
| <u>Less payments</u> | = \$ 200.00 |
| Balance Due NASD Regulation, Inc. | = \$ 0.00 |

Respondent TKA be and hereby is solely liable for:

| | |
|-----------------------------------|-------------|
| <u>Member Fees</u> | = \$4600.00 |
| Total Fees | = \$4600.00 |
| <u>Less payments</u> | = \$4600.00 |
| Balance Due NASD Regulation, Inc. | = \$ 0.00 |

Respondents be and hereby are jointly and severally liable for:

| | |
|-----------------------------------|-------------|
| <u>Forum Fees</u> | = \$4500.00 |
| Balance Due NASD Regulation, Inc. | = \$4500.00 |

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Roda Paul Starks
Public Arbitrator, Presiding Chair

Signature Date

/s/

Marsha Matson
Public Arbitrator

Signature Date

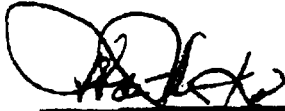
/s/

Joel H. Holzer
Industry Arbitrator

Signature Date

December 21, 1999
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures



Roda Paul Starks
Public Arbitrator, Presiding Chair

12/10/99
Signature Date

Marsha Matson
Public Arbitrator

Signature Date

Joel H. Holzer
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

Roda Paul Starks
Public Arbitrator, Presiding Chair

Signature Date

Marsha Matson, Ph.D.
Marsha Matson
Public Arbitrator

12-17-99
Signature Date

Joel H. Holzer
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

Roda Paul Starks
Public Arbitrator, Presiding Chair

Signature Date

Marsha Matson
Public Arbitrator

Signature Date


Joel H. Holzer
Industry Arbitrator

12/10/99
Signature Date

Date of Service (For NASD office use only)