

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Iola S. Shrout v. Everen Securities, Inc. And Marshall Lewis

Case Number: 99-3288

Hearing Site: Omaha, Nebraska

REPRESENTATION OF PARTIES

Claimant, Iola S. Shrout ("Shrout"), hereinafter referred to as "Claimant": Rodney K. Vincent, Esq., Vincent Law Offices, Lincoln, Nebraska.

Respondent, Everen Securities, Inc. ("Everen"), hereinafter referred to as "Respondent": William D. Nelson, Esq., Rothberger, Johnson & Lyons, LLP, Denver Colorado.

Respondent, Marshall Lewis ("Lewis"): did not appear.

CASE INFORMATION

Statement of Claim filed on or about: July 20, 1999

Claimant signed the Uniform Submission Agreement: July 7, 1999

Statement of Answer filed by Respondent, Everen, on or about: October 11, 1999

Respondent, Everen, signed the Uniform Submission Agreement: October 11, 1999

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; common law negligence, including violation of duties owed the Claimant arising out of breach of NASD's rules of Fair Practice and applicable SEC rules; breach of contract; violation of the anti-fraud provisions of the securities laws of the United States and the state of Nebraska; and failure to supervise. The causes of action relate to the alleged mishandling in connection with securities transactions in Claimant's account.

Unless specifically admitted in its Answer, Respondent, Everen, denied the allegations made in the Statement of Claim and asserted the following affirmative defenses: Claimant has failed to state a claim upon which relief may be granted; Claimant's claims are barred by the doctrines of laches, estoppel and waiver; Claimant has failed to mitigate her damages, if any; and Claimant's damages, if any, are the result of circumstances over which Everen had no control.

RELIEF REQUESTED

Claimant requested actual damages of \$59,000.00, plus punitive damages, costs including expert witness fees and consulting fees, expenses and disbursements, Attorneys' fees, and such other relief the Arbitrators deem just and equitable.

Respondent requested that Claimant's claims be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Marshall Lewis has

neither been properly served with the Statement of Claim nor received due notice of the hearing. The Panel determined that arbitration of the matter would proceed against Everen Securities, Inc. without said Respondent Lewis' presence, in accordance with the NASD Code of Arbitration Procedure (the "Code"). Respondent Everen's Answer indicated that Respondent Lewis died in September, 1998. The Panel did not make any determinations regarding claims against Respondent Lewis.

AWARD

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

- 1.) Respondent, Everen Securities, Inc., is solely liable for and shall pay to Claimant Iola S. Shrout the sum of \$24,500.00 in compensatory damages;
- 2.) Respondent Everen Securities, Inc., is solely liable for and shall pay to Claimant, Iola S. Shrout, the sum of \$4,960.00 in expert witness fees;
- 3.) Respondent Everen Securities, Inc., is solely liable for and shall pay to Claimant, Iola S. Shrout, the sum of \$975.00 as fees retained by NASD Dispute Resolution, Inc.
- 4.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 5.) That any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

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 = \$ 225.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person(s) at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$1,500.00

Forum Fees and Assessments

The 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:

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One (1) Pre-hearing session with Panel x \$450.00	= \$ 450.00
Pre-hearing conference: March 8, 2000 1 session	
Four (4) Hearing sessions x \$3,000.00	= \$3,000.00
Hearing Dates: August 21, 2000 2 sessions	
August 22, 2000 2 sessions	
Total Forum Fees	= \$3,450.00

The Panel has assessed \$750.00 to Iola S. Shrout.

The Panel has assessed \$2,700.00 of the forum fees to Everen Securities, Inc.

Fee Summary

Claimant, Iola S. Shrout, be and hereby is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$ 975.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due to NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent, Everen Securities, Inc., be and hereby is solely liable for:

Member Fees	= \$ 3,100.00
<u>Forum Fees</u>	<u>= \$ 2,700.00</u>
Total Fees	= \$ 5,800.00
<u>Less payments</u>	<u>= \$ 2,500.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,300.00

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

Don Muyskens, Esq.
Public Arbitrator, Presiding Chair

Signature Date

James R. Baratta
Public Arbitrator

Signature Date



Gerald J. Stratman
Industry Arbitrator

9-22-00

Signature Date

Date of Service (For NASD office use only)

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