

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Henry T. Kim and Julia O. Kim

Claimants

} Case #88-01891

vs.

} Award

PaineWebber, Inc. and Timothy Tunney

Respondents  
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CASE SUMMARY

Claimants filed this action on June 13, 1988 against Respondents for negligence, failure to disclose material facts, and for the recommendation of unsuitable securities in light of Claimants' investment objectives. Claimants invested a total of \$200,000.00 in shares of the Franklin California Insured Tax Free Income Fund ("Franklin Fund") on February 4, 1987 and April 15, 1987 respectively, through respondents PaineWebber, Inc. and Timothy Tunney. Claimants alleged that in making the investment recommendation to purchase the Franklin Fund, Respondent Tunney did not disclose that the principal amount invested in the Fund was subject to fluctuation in response to fluctuation in the interest rate. Additionally, Claimants alleged that Respondent Tunney acted in reckless and wanton disregard of Claimants' best interests and in breach of his fiduciary duty.

Respondents maintain that neither Tunney or PaineWebber, Inc. solicited the Claimants nor initially recommended that the Claimants' purchase the Franklin Fund. Respondents further maintain that in accepting Claimants order for this purchase a suitable investment was made, that the Claimants were provided with all the information necessary to make an informed investment decision, that the losses realized by the Claimants was due to their choice to liquidate their investment in the Franklin Fund on October 19, 1987 against the advice of Respondent Tunney, and that Claimants are solely responsible for bearing the consequences of adverse market conditions on the value of their investment. Additionally, Respondents raise the affirmative defenses of assumption of the risk, estoppel, authorization and/or ratification of all transactions, waiver, and that respondents discharged its duties in good faith and exercised the care, diligence and skill which ordinarily prudent men would exercise in similar circumstances and like positions.

RELIEF REQUESTED

Claimants requested actual damages of \$50,000.00, plus punitive damages in an amount at least equal to the amount of actual damages award, interest from October 15, 1987 on the amounts awarded at money market rates, and attorneys' fees and costs of this proceeding. Respondents requested dismissal of the claim in its entirety, together with costs of this proceeding. Respondents further maintain that the Statement of Claim fails to state a cause of action upon which exemplary or punitive damages may be awarded and which attorneys' fees may be recovered.

## AWARD

On June 6, 1989 in Los Angeles, California, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Henry T. Kim and Julia O. Kim on June 2, 1988, and by Respondents PaineWebber, Inc. on August 23, 1988 and Timothy Tunney on July 22, 1988. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, lasting one session, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents PaineWebber, Inc. and Timothy Tunney are hereby jointly and severally liable for and shall pay to Claimants Henry T. Kim and Julia O. Kim the sum of Twenty Four Thousand, Sixty Two Dollars and Zero Cents (\$24,062.00).

2. The claim for punitive damages is hereby dismissed.

3. The claim for interest on the amount awarded is hereby dismissed.

4. The parties shall each bear their respective costs including attorneys' fees.

5. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$500.00 filing fee previously deposited by the Claimant. Respondents are hereby jointly and severally liable for the sum of \$500.00 representing the filing fee and shall reimburse Claimants directly.

## OTHER ISSUES

Parties stipulated at the hearing to the execution and service of this award in signed counterpart copies.

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## ARBITRATORS CONCURRING

Herman R. Friedberg

*Moonsong David Oh*  
Moonsong David Oh

Robert D. Sussin