

N.A.S.D. AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Atkins Realty, Inc.

90-00260

Name of Respondent(s)

PaineWebber, Inc.
Robert J. Bukowski

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on January 24, 1990, Claimant Atkins Realty, Inc. alleged that Respondent Robert J. Bukowski, while acting as an agent or employee of Respondent PaineWebber, Incorporated, intentionally misrepresented the attributes of the Pilgrim Adjustable Rate Fund in order to induce the purchase of shares of the fund, and that the investment was contrary to the express understanding and instructions concerning Claimant's investment goals and objectives.

In a Statement of Answer filed with the NASD on April 27, 1990, as amended April 9, 1991, Respondents PaineWebber, Incorporated and Robert J. Bukowski denied the allegations of the Statement of Claim, stating that: 1) Claimant was provided with all required disclosures prior to purchase of the fund; 2) Claimant bought and kept the fund to take advantage of the 85% tax free dividends; 3) Julius Atkins, Claimant's President who made all investment decisions, was a sophisticated investor who clearly understood the investment due to his investment and business experience; 4) Claimant bought at three different prices and therefore, knew the principal could fluctuate; and 5) the loss incurred was the result of market risk and not caused by Respondents. In addition, the following affirmative defenses were alleged:

1. The Statement of Claim fails to state a cause of action upon which relief can be granted;
2. Respondents acted in good faith, in compliance with all applicable rules and regulations, and did not directly induce the alleged violation of law;
3. Claimants is barred from bringing this Statement of Claim by the doctrines of waiver, ratification and estoppel;
4. Claimant's claim is barred in whole or in part by his knowledge and assumption of risk of loss; and,
5. Claimant failed to mitigate his losses.

RELIEF REQUESTED

Claimant Atkins Realty, Inc. requested entry of an award against Respondent PaineWebber, Inc. and Robert J. Bukowski in the amount of \$53,377.39, together with its costs and disbursements in this matter.

Respondents PaineWebber, Inc. and Robert J. Bukowski requested that the Claimant's case be dismissed in its entirety with costs to the Claimant.

PROCEDURAL MATTERS

On April 24, 1991 in Milwaukee, Wisconsin, during a hearing lasting one (1) session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on January 19, 1990 by Julius R. Atkins on behalf of Claimant Atkins Realty, Inc., on April 25, 1990 by Romaine L. Gardner on behalf of Respondent PaineWebber, Inc. and on April 24, 1991 by Respondent Robert J. Bukowski.

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

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. Each party shall bear their own costs, including attorneys' fees, except for those specifically enumerated herein; and
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$150.00 and the hearing session deposit in the amount of \$350.00 previously deposited with the NASD by the Claimant Atkins Realty, Inc. Claimants Atkins Realty, Inc. is liable for and shall pay additional forum fees of \$150.00 to the NASD.

Dated: April 24, 1991

Ewald L. Moerke, Sr.
Presiding Chair

Dated: April 24, 1991

Thomas H. Sutter, Esq.

Dated: April 24, 1991

Ramona V. Larson
Industry Arbitrator

Date Served: April 29, 1991