

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Marylea Jordan)

Name of Respondent(s))

Easter Kramer Group Securities, Inc.)
Integrated Resources Equity Corp.)
James Weber)
Charles Hilbun)

Case No. 90-00898

Heard before the members of the Arbitration Panel:

Robert Herschmann, Esq.
Andrew Bartfay
Samson Silberman

Public
Public
Industry

REPRESENTATION

Claimant, Marylea Jordan ("Jordan"), was represented by Jeffrey A. Winikoff, Esq. of Stein, Rosenberg and Winikoff, P.A.

Respondent, Integrated Resources Equity Corp. ("IREC"), was represented by Curtis Carlson, Esq. of Carlson & Schwed, P.A.

Respondent, Easter Kramer Group Securities, Inc. ("EKG"), failed to appear at the hearing.

Respondents' James Weber ("Weber") and Charles Hilbun ("Hilbun"), were pro-se.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on March 28, 1990. Claimant alleged that Respondents, EKG, IREC, Weber and Hilbun, were liable for: violations of Florida Statute Section 517.301; common law fraud; negligent safekeeping and investment of Claimant's assets; negligent hiring and supervision; breach of fiduciary duty; civil theft; and violations of the Federal RICO Act.

Claimant alleged that: Respondents misrepresented the liquidity of a variable annuity life insurance policy; Respondents failed to inform Claimant of the penalties associated with withdrawals from that policy; some investments such as covered calls, certain mutual junk bond and penny stock funds purchased for Claimant were unsuitable in light of Claimant's investment objectives; Claimant was placed on margin without her knowledge; and otherwise misrepresented the status of the account to Claimant.

In a Statement of Answer filed with the NASD on August 10, 1990, Respondent, Hilbun, denied liability. Respondent, Hilbun, filed for bankruptcy on June 3, 1991 and, therefore, the claim against him was dismissed, without prejudice, pursuant to the automatic stay provisions of the U.S. Bankruptcy Code.

In a Statement of Answer filed on January 15, 1991, Respondent, Weber, alleged that: he was not a control person of EKG and was not responsible for the actions of Hilbun; Weber had no supervisory control over any of the Respondents; and Claimant purchased the variable annuity one year prior to the assumption of EKG accounts by Integrated.

In a Statement of Answer filed with the NASD on January 15, 1991, Respondent, IREC, alleged that: at no time did IREC have a contract that gave it control over EKG, Weber or Hilbun, nor did IREC ever have any ownership interest in EKG; IREC was not a control person of EKG; Weber and Hilbun were not employees of IREC; IREC owed no fiduciary duty to Claimant and had no duty to supervise Hilbun or Weber; and Claimant has failed to allege any misconduct or wrongdoing on the part of IREC.

Respondent, EKG, failed to file an Answer and did not appear at the hearing to defend.

RELIEF REQUESTED

Claimant requested rescission or damages in the amount of \$670,000.00 plus interest, attorney's fees, treble and other punitive damages.

Respondent, EKG, failed to file an Answer and did not appear at the hearing to defend.

Respondent, IREC, requested dismissal of the claim plus costs and attorney's fees.

Respondents, Weber and Hilbun, requested dismissal of the claim.

AWARD

On January 22, 23 and June 4, 1991, in Fort Lauderdale, Florida, during a hearing lasting six (6) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, on January 23, 1990 and by Respondent, Weber, on January 8, 1991, and not signed by Respondents, EKG, IREC or Hilbun as required by Sections 12 and 25 of the Code, Respondents, EKG and IREC, being NASD member

firms and Respondent, Hilbun, being a person associated with an NASD member firm, Easter Kramer Group Securities, at the time this controversy arose.

After considering the pleadings, the testimony, and the evidence presented at the hearing, and Respondent, EKG, neither appearing at the hearing nor requesting an adjournment thereof, notwithstanding its knowledge of this proceeding as evidenced in Arbitrator's Exhibit #2, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondents, IREC, Weber and Hilbun, have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, these parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.
2. Respondents, IREC and Weber, are found not liable and, therefore, all claims against them are hereby dismissed.
3. Respondent, EKG, is found liable and shall pay to the Claimant the amount of \$162,000.00, plus interest at the legal rate of 12% per annum from May 26, 1989 to June 4, 1991 in the amount of \$38,294.14 for a total due to the Claimant of \$200,294.14
4. Respondent, EKG, is also found liable for attorney's fees pursuant to Section 517.211, Florida Statutes. This Panel leaves the determination of the amount of such attorney's fees to the sound discretion of the appropriate court.
5. Respondent, IREC's request for attorney's fees and costs is denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$6,000.00 (6 sessions x \$1,000.00 per session). Respondent, EKG, is hereby assessed \$6,000.00, \$1,000.00 of which shall be paid directly to the Claimant as a return of her filing fee, and \$5,000.00 of which shall be paid to the National Association of Securities Dealers, Inc. The NASD shall retain the \$1,000.00 previously deposited in partial satisfaction of such forum fees.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

1. Jurisdiction over Respondent, EKG, exists pursuant to Section 12 of the NASD Code of Arbitration Procedure.
2. For the reasons set forth in the record of proceedings and contained in Arbitrators Exhibit #2, this Panel finds service upon and adequate notice to Respondent, EKG. The NASD has made every attempt to locate and serve Respondent, EKG, with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.
3. On June 3, 1991, Respondent, Hilbun, filed for Bankruptcy pursuant to Chapter 7 of the U.S. Bankruptcy Code. Under the automatic stay provisions of the Bankruptcy Code, the hearing was stayed as to Respondent, Hilbun and, therefore, he is dismissed without prejudice.

Concurring Arbitrators' Signatures

/s/
Robert Herschmann, Esq.

/s/
Andrew Bartfay

/s/
Samson Silberman

Date of Decision: July 9, 1991