

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

West C. Jacobs

90-01102

Name of Respondent(s)

Gene Mackevich
Barbara Mackevich

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 17, 1990, Claimant West C. Jacobs alleged that Respondents Gene Mackevich and Barbara Mackevich placed \$470,000 of his monies in an unsuitable investment in the Hutton HIS Government Securities Series II and Short-Term Fund. Claimant further alleged that his investment was induced by false representations and/or omissions made to him by the Respondents in regard to the investment.

In a Statement of Answer filed with the NASD on June 26, 1990, Respondents Gene Mackevich and Barbara Mackevich denied that they were indebted to Claimant in any sum whatsoever, stating that all investment decisions rested solely with the Claimant; that the HIS Government Securities Series had an excellent record prior to Claimant's investment, but there was no guarantee that the fund would maintain this rate of return; and, that amounts claimed as a loss were actually a 5% back-end sales charge which was set forth in the prospectus and fully explained by Respondents.

In an Amended Statement of Claim filed with the NASD on July 7, 1990, claimant denied certain allegations presented in the Statement of Answer and amended the relief requested.

RELIEF REQUESTED

Claimant West C. Jacobs requested entry of an award against Respondents Gene Mackevich and Barbara Mackevich in the amount of \$37,027.61.

Respondent Gene Mackevich and Barbara Mackevich requested that the Statement of Claim be dismissed and denied in its entirety.

PROCEDURAL MATTERS

In a letter received by the NASD on January 22, 1991, Claimant West C. Jacobs informed the parties, the NASD staff, and the arbitrators that he could not appear at the scheduled hearing, waiving his appearance at the hearing and requesting that his claim be presented on the papers submitted and on additional information presented in his letter of January 22, 1991. On January 30, 1991, the panel convened and was advised of Jacob's letter, accepted the additional information and determined that the hearing would proceed in Jacob's absence pursuant to Section 29 of the NASD Code of Arbitration Procedure.

AWARD

On January 30, 1991, in Milwaukee, Wisconsin during a hearing lasting one session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 27, 1990 by Claimant West C. Jones, on June 22, 1990, by Respondent Gene Mackevich, and on June 22, 1990 by Respondent Barbara Mackevich..

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 dismissed and denied in its entirety;
2. Each party shall bear their own costs of arbitration, including attorney's fees, except for those specifically enumerated herein;
3. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$120.00 non-refundable filing fee and the \$280.00 hearing session deposit previously deposited with the NASD by the Claimant West C. Jacobs. Respondents Gene Mackevich and Barbara Mackevich are liable for and shall pay to the NASD additional forum fees of \$120.00.

Dated: 3/6/91

By the Panel

/S/

Emanuel V. Gumina
Presiding Chair

Emanuel V. Gumina, Esq.

Dated: _____

/S/

Eldred M. Swingen

Dated: _____

/S/

Constance A. Shannon
Industry Arbitrator

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By the Panel

Dated: _____

/S/ _____
Presiding Chair
Emanuel V. Gumina, Esq.

Dated: March 7, 1991

/S/ Eldred M. Swingen
Eldred M. Swingen

Dated: _____

/S/ _____
Industry Arbitrator
Constance A. Shannon

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By the Panel

Dated: _____

/s/ _____
Presiding Chair
Emanuel V. Gumina, Esq.

Dated: _____

/s/ _____
Eldred M. Swingen

Dated: 3/6/91

/s/ Constance A. Shannon
Industry Arbitrator
Constance A. Shannon