

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Thomas & Judith Crimmins

90-01193

Name of Respondent(s)

R.L. Kotrozo, Inc.
Raymond Kotrozo
Carol Kotrozo

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 26, 1990, Claimants Thomas D. Crimmins and Judith Crimmins alleged that Respondents R. L. Kotrozo, Inc., Raymond L. Kotrozo, and Carol Kotrozo recommended unsuitable investments in limited partnerships for Claimants, and made certain purported "guarantees" to Claimants that they would recover all losses associated with the investments through the purchase of zero coupon bonds to secure such repayment, but did not acquire the bonds to cover the losses. Based upon the allegations, Claimants allege that Respondents committed violations of the federal and state anti-fraud provisions, the Arizona RICO act, fraud, deceit, and consumer fraud. It is further alleged that Respondents' conduct constitutes breach of the fiduciary duty to Claimants; breach of agency, trust and contract; breach of the implied covenant of good faith and fair dealing; and negligence.

In a Statement of Answer filed with the NASD on October 22, 1990, Respondents Raymond L. Kotrozo and R. L. Kotrozo, Inc. denied the material allegations of the Statement of Claim, alleging that the investments were suitable, the guarantees were made for absolutely no consideration and that the claim was premature as the guarantee regards a future date.

RELIEF REQUESTED

Claimants Thomas D. Crimmins and Judith Crimmins requested entry of an award against Respondents, jointly and severally, in the amount of \$19,756.51 plus interest from the date of the investment until paid; treble damages pursuant to the Arizona RICO act, and attorneys' fees and costs.

Respondents R. L. Kotrozo, Inc. and Raymond L. Kotrozo requested that the Statement of Claim be dismissed and denied in its entirety.

PROCEDURAL MATTERS

At the hearing, Claimant amended his Statement of Claim to request punitive damages. In addition, Claimant amended to include a claim under the Federal RICO statute. The arbitrators determined that the amendment to the claim would be accepted.

AWARD

On March 21, 1991 in Phoenix, Arizona during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on April 26, 1990 by Claimants Thomas D. Crimmins and Judith Crimmins.

Respondents R. L. Kotrozo, Inc., Raymond L. Kotrozo, and Carol Kotrozo did not file with the NASD a properly executed submissions to arbitration and have refused to execute a submission to arbitration. Respondents R. L. Kotrozo, Inc. and Raymond L. Kotrozo are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared, and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted. 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 received conformed copies of the award while the original(s) remain on file with the NASD.

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. The parties shall bear their own respective costs, including attorneys' fees except for those specifically enumerated herein.
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$250.00 filing fee and the \$750 hearing session deposit previously deposited with the NASD by the Claimants Thomas D. Crimmins and Judith Crimmins. Claimants Thomas D. Crimmins and Judith Crimmins are liable for and shall pay to the NASD additional forum fees of \$1,250.00.

By the Panel

Dated: March 21, 1991

Charles Hoover
Presiding Chair

March 21, 1991

John Hansgen
Public Arbitrator

March 21, 1991

Peter Kay
Industry Arbitrator