

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Lois Landau
Kenneth Landau

NASD Arbitration
No. 91-00314

Name of Respondent(s)

Talley, McNeil & Tormey, Inc.
Richard William Talley
Sidney L. McNeil
Robert Tormey
Charles C. Gray

REPRESENTATION

For Claimants: Dilworth A. Nebeker, Esq., Haws, Record, Williford
& Magnusson, Santa Barbara, California

For Respondent Richard William Talley: H Thomas Fehn, Esq., Fields,
Fehn & Sherwin, Los Angeles, California

For Respondent Sidney L. McNeil: Sidney L. McNeil, Rogers, Arkansas

For Respondent Charles C. Gray: Charles C. Gray, Santa Barbara,
California

CASE INFORMATION

Statement of Claim filed: January 23, 1991

Claimants' Submission Agreements signed: January 23, 1991

Joint Statement of Answer filed by Respondents Talley, McNeil &
Tormey, Inc., Richard William Talley, Sidney L. McNeil and Charles
C. Gray: May 2, 1991

Respondents' Submission Agreements signed as follows:

Talley, McNeil & Tormey, Inc.: July 29, 1991
Richard William Talley: June 5, 1991
Sidney L. McNeil: April 2, 1991
Charles C. Gray: May 6, 1991

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HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

August 25, 1994 (one session)

Hearing Date(s)/Session(s): September 12, 1994 (two sessions)

September 13, 1994 (one session)

September 14, 1994 (one session)

Hearing Location:

Los Angeles, California

CASE SUMMARY

Claimants alleged that Respondents took advantage of their confidential/fiduciary relationship with Claimants and used Claimants' assets to make inappropriate and unauthorized investments, thereby committing the following violations: 1) violation of California Corporations Code Section 25400(d); 2) violation of California Corporations Code Section 25401; 3) violation of California Corporations Code Section 25504; 4) breach of fiduciary duty; 5) general negligence; 6) negligent misrepresentation; 7) deceit; 8) constructive fraud; 9) unsuitable recommendations; and 10) intentional infliction of emotional distress. Claimants' Statement of Claim set forth the following investments in dispute: Nuveen Performance Plus Municipal Fund, Inc., VMS Strategic Land Fund 2 and VMS Short Term Income Trust.

Respondents denied any liability to Claimants and alleged that Claimants are wealthy individuals who made a significant amount of their money through speculative real estate investments. Respondents further alleged that all of the transactions with respect to Claimants' investments were discussed at great length with Claimants before being executed. Respondents further alleged that Claimants are experienced real estate investors who exercised their own judgment regarding each of their investments and that contrary to the statements of the Claimants, these investments were sound and conservative, and at the time, were some of the most solid vehicles on the market. Respondents further alleged that unfortunately, these investments did not perform up to the Claimants' expectations and that Respondents, however, are not guarantors and cannot be held liable for any decline in Claimants' investments. Respondents further alleged that Claimants received prospectuses, quarterly reports, and monthly statements reflecting equity and margin and alleged that Claimants received confirmation statements reflecting each transaction executed in their account and that not once did Claimants complain of unauthorized trades or misrepresentation of risk before the losses occurred. Respondents also asserted affirmative defenses.

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RELIEF REQUESTED

Claimants requested relief as follows:

1. For a declaration that all arbitration provisions of any agreements are void and of no force and effect as to Defendants;
2. Compensatory damages, the amounts of which, are to be proven at hearing, but which are believed to be in excess of \$400,000.00;
3. Punitive damages according to proof;
4. Interest as allowed by statutes;
5. For their costs of suit;
6. Reasonable attorneys' fees; and
7. Such other relief as the panel may deem just and proper.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety with costs to be taxed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

The above-captioned matter was initially filed in Superior Court of the State of California, County of Santa Barbara, case number 182626. On October 2, 1990, the court proceedings were stayed and this matter was referred to arbitration.

Pursuant to Claimants' requests, various hearing dates were taken off calendar between the period of February 1992 and November 1993.

At hearing, the panel of arbitrators was advised that on September 9, 1994, Respondent Talley, McNeil & Co., Inc., a California corporation (named in the above entitled action as Talley, McNeil & Tormey, Inc.), filed a petition for relief under Chapter 7 of Title 11 of the United States Code in the United States Bankruptcy Court, Central District of California, Santa Ana Division, thereby staying all judicial proceedings against said Respondent pursuant to 11 U.S.C. Section 362(a).

At hearing, the panel of arbitrators heard and considered the positions of the parties relative to Respondent Sidney L. McNeil's Motion to Dismiss. The panel denied the Motion.

The parties have agreed that the Award in this matter may be executed in either 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 originals remain on file with the National Association of Securities Dealers, Inc. (NASD).

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AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Robert Tormey is dismissed from this proceeding, without prejudice. The panel determined that Mr. Tormey could not be located for proper service.

2. All claims by Claimants against Respondents Sidney L. McNeil and Charles C. Gray are dismissed.

3. Respondent Richard William Talley is solely liable for and shall pay to Claimants the sum of \$140,000.00, in satisfaction of Claimants' claims.

4. The claim for punitive damages is denied.

5. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund \$250.00 of the \$1,000.00 hearing session deposit previously deposited by Claimants. The NASD shall retain the remaining balance of Claimants' hearing deposit in the amount of \$750.00 as an assessment of forum fees against Claimants for one of four hearing sessions. Respondent Richard William Talley is assessed the remaining balance of forum fees in the amount of \$2,550.00, calculated as follows: One pre-hearing session times \$300.00/session plus three of four hearing sessions times \$750.00/session.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Diana G. Davis, Esq.	Public Arbitrator
Frank Milton Hodgson	Public Arbitrator
Luther Delano Prater	Industry Arbitrator

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Concurring Arbitrators' Signatures



Diana G. Davis, Esq.

Frank Milton Hodgson

Luther Delano Prater

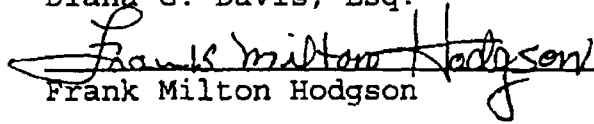
Date of Decision: _____

Date Served: 10-7-94

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Diana G. Davis, Esq.



Frank Milton Hodgson

Luther Delano Prater

Date of Decision: _____

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