

Book

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John W. and Josephine C. Hughes

91-01596

JUL 30 1992

Name of Respondents

R.J. Steichen & Co., Inc.
Patrick F. Kelly

REPRESENTATION

For Claimants: Wallace G. Hilke, Esq. of Lindquist & Vennum, Minneapolis, Minnesota.

For Respondent R.J. Steichen & Co., Inc.: F. Chet Taylor, Esq. of Frederickson & Byron, Minneapolis, Minnesota. For Respondent Patrick F. Kelly: Pro Se.

CASE INFORMATION

Statement of Claim filed: May 22, 1991.

Claimant's Submission Agreement signed on: May 8, 1991.

Statement of Answer and Cross-claim filed by Respondent, R.J. Steichen & Co., Inc. on: July 16, 1991. Statement of Answer and Counterclaim filed by Respondent, Patrick F. Kelly on: August 19, 1991.

Respondent, R.J. Steichen & Co.'s Submission Agreement signed on: August 15, 1991.

Claimant's Answer to Counterclaim filed on or about: November 22, 1991.

HEARING INFORMATION

Hearing Date/Sessions: June 9, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants John W. and Josephine C. Hughes ("Hughes") alleged that Respondent R.J. Steichen & Co., Inc. ("Steichen") through its agent, Respondent, Patrick F. Kelly ("Kelly") purchased unsuitable investments

despite their conservative investment objective, and, engaged in misrepresentation to induce the Hugheses to invest in the unsuitable securities.

The Hugheses alleged that the unsuitable investments which Kelly purchased were Angeles Partners XV Real Estate Limited Partnership, Eaton Vance Retirement Trust, Franklin Utilities Series, Franklin Equity Fund, Phoenix Growth Fund, Phoenix Money Market Fund, Phoenix Stock Fund, Southmark/CRCA VIII Limited Partnership and ICAP Funds. The Hugheses further alleged that Kelly offered poor investment advice, the worst of which was the advice to finance investments through a home mortgage.

Respondent Steichen generally denied the allegations set forth in the Statement of Claim. Steichen alleged that they cannot be held liable for any actions or omissions occurring after April 17, 1987 because Kelly's relationship with Steichen ceased when he transferred his license to Boardwalk Capital Corporation. Steichen asserted the Statute of Limitations as a defense. In their cross-claim, Steichen requested that in the event the panel finds any wrongdoing on the part of Kelly, that the panel award Steichen indemnification from Kelly to the full extent of any damages assessed against Steichen.

Respondent Kelly generally denied the allegations of the Statement of Claim. Kelly alleged that prospectuses were delivered and the risks were disclosed, and that he cannot be held responsible for the performance of the investments. Kelly further alleged that the Statement of Claim contains misstatements. Kelly filed a counterclaim against the Hugheses to recover costs, disbursements and reasonable attorney's fees and witness fees incurred, as well as damages and punitive damages under Minn. Stat. Sections 549.20, 549.21, and Jordan v. Lamb, 392 N.W. 2d 607 (Minn. App. 1986) for bringing such a malicious and frivolous action against Kelly.

The Hugheses, in their response to the counterclaim, asked the panel that it be dismissed.

RELIEF REQUESTED

Claimants requested rescission of their purchase of unsuitable and unmarketable securities (which securities are hereby tendered to Respondents) and payment of their actual damages plus interest and costs in a total amount in excess of \$120,000.00, punitive damages in an amount in excess of \$120,000.00, reasonable attorney's fees, and such other relief as is allowed by law and as the panel deems just and equitable.

Respondent R.J. Steichen & Co., Inc. requested that the Statement of Claim be denied. Respondent Kelly requested that the Statement of Claim be dismissed with prejudice, actual damages suffered by Respondent on account of the malicious prosecution of the arbitration claim by the Hugheses, punitive damages under Minn. Stat. Section 549.20, and costs, disbursements and reasonable attorney's fees and witness fees incurred.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

Respondent Patrick F. Kelly did not file with the NASD a properly executed Submission to Arbitration, but having answered the Statement of Claim and appeared at the arbitration, is bound by the panel's determination on all issues submitted for determination pursuant to Section 12 of the Code of Arbitration Procedure.

The Claimants, John and Josephine Hughes, settled their claims against Respondent R.J. Steichen, at the hearing. Respondent R. J. Steichen requested that they be entitled to subrogation against Respondent Patrick Kelly, in the settlement amount. The panel denied this request. As part of the settlement agreement between the Claimants John and Josephine Hughes and Respondent R. J. Steichen, the Hugheses are to assign over to R. J. Steichen, the Angeles Partners XV Real Estate Limited Partnership.

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 Patrick F. Kelly shall be and hereby is liable for and shall pay to the Claimants, John and Josephine Hughes, damages in the amount of Eighty Thousand Four Hundred Forty Six Dollars and No Cents (\$80,446.00);
2. Respondent Patrick F. Kelly shall be and hereby is liable for and shall pay to the Claimants, John and Josephine Hughes, attorney's fees in the amount of Fifteen Thousand Eight Hundred Forty Six Dollars and Twenty Six Cents (\$15,846.26). The panel awarded attorney's fees under the authority of Minn. Stat. Ch. 80.
3. The Claimant's request for interest is denied;
4. The Claimant's request for punitive damages is denied;
5. Respondent R. J. Steichen's cross-claim against Respondent Patrick Kelly is denied;
6. Respondent Patrick Kelly's counterclaim against the Claimants John and Josephine Hughes is denied in its entirety;
7. Each of the parties shall bear their own costs and expenses incurred herein, other than those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

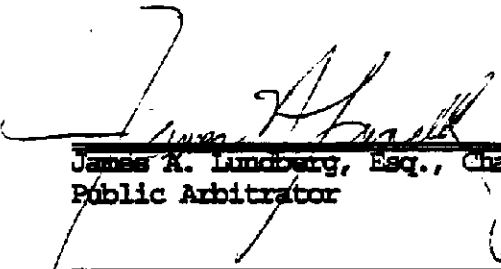
2 sessions X \$750.00 = \$1,500.00 minus hearing session deposit of \$750.00 = net \$750.00 due.

Forum fees Assessed Against: Respondent Patrick Kelly in the amount of \$750.00.

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

By The Arbitration Panel:

DATED:


James R. Lundberg, Esq., Chairperson
Public Arbitrator

7/28/1992

Wendy J. Wildung, Esq.
Public Arbitrator

Lawrence W. Carlson
Industry Arbitrator

Date Award Served By The NASD: _____

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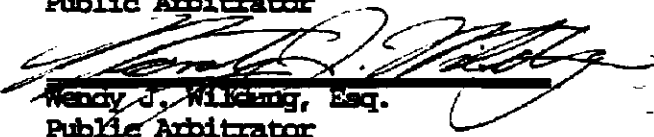
Forum fees Assessed Against: Respondent Patrick Kelly in the amount of \$750.00.

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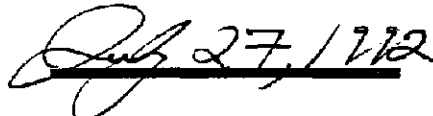
By The Arbitration Panel:

DATED:

James A. Lundberg, Esq., Chairperson
Public Arbitrator



Wendy J. Wilkang, Esq.
Public Arbitrator



July 27, 1992

Lawrence W. Carlsen
Industry Arbitrator

Date Award Served By The NASD: _____

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DATED:

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Public Arbitrator

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Public Arbitrator

Lawrence W. Carlsen
Industry Arbitrator



Date Award Served By The NASD: _____