

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Richard & Luella Eggenberger

91-02093

Name of Respondents

Askar Corporation
James H. Ruitu
Ben Skaar

REPRESENTATION

For Claimants: F. Chet Taylor, Esq. of Fredrikson & Byron, Minneapolis, Minnesota.

For Respondents Askar Corporation and Ben Skaar: Timothy C. Cook, Esq. of Moore, Costello & Hart, Minneapolis, Minnesota. For Respondent James H. Ruitu: Jerome M. Rudawski, Esq., Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed on July 5, 1991.

Claimant's Submission Agreement signed on July 1, 1991.

Joint Statement of Answer filed by Respondents, Askar Corporation and Ben Skaar on September 3, 1991. Statement of Answer filed by Respondent James Ruitu on September 27, 1991.

Respondents, Askar Corporation and Ben Skaar's Submission Agreement signed on August 12, 1991. Respondent James Ruitu's Submission Agreement signed on September 23, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: June 2, 1992 for two (2) sessions;
June 3, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants, Luella R. Eggenberger and Richard A. Eggenberger ("the Eggenbergers") alleged that Respondents Askar Corporation and Ben Skaar, through its agent, Respondent James Kuitu ("Kuitu") lost the Eggenbergers' monies through investments made in the Griffin Real Estate Fund limited partnership and the CRW Real Estate Investments VII limited partnership. The Eggenbergers alleged that they invested in the limited partnerships based on Kuitu's representations that the investments were safe and suitable. The Eggenbergers further alleged that Kuitu never disclosed any of the risks involved. The Eggenbergers alleged suitability, negligence, breach of fiduciary duty, violation of Minnesota Consumer Fraud Act, Common Law Fraud, Negligent Supervision, and Respondeat Superior.

Respondents Askar Corporation and Ben Skaar generally denied the allegations set forth in the Statement of Claim. Askar Corporation and Ben Skaar also specifically denied that the Eggenbergers incurred the damages alleged in their claim and denied that Kuitu breached any duty.

Respondent James Kuitu generally denied the allegations set forth in the Statement of Claim. Kuitu denied having committed any fraud, misrepresentation, or deceptive practices with respect to the allegations contained in the Statement of Claim.

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$55,000.00, interest in the amount of \$19,413.00, punitive damages in the amount of \$55,000.00, plus attorney's fees and costs.

Respondents Askar Corporation and Ben Skaar requested that judgment be entered in their favor and against Claimants and that Claimants recover nothing by their Statement of Claim and that Askar Corporation and Ben Skaar be awarded their costs and attorney's fees and such other relief as is determined to be just and equitable. Respondent James Kuitu requested that judgment be entered in his favor and against Claimants, and that Claimants recover nothing by their Statement of Claim, and that he be awarded his costs and attorney's fees, and such other relief as is determined to be just and equitable.

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.

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. The Claimant's Statement of Claim against Respondent Ben Skaar is denied;
2. Respondents Askar Corporation and James Kuitu shall be and hereby are jointly and severally liable for and shall pay to the Claimants Luella and Richard Eggenberger, damages in the amount of Fifty Five Thousand Dollars and No Cents (\$55,000.00);
3. Respondents Askar Corporation and James Kuitu shall be and hereby are jointly and severally liable for and shall pay to the Claimants Luella and Richard Eggenberger, interest at five percent (5%) per annum, compounded from the date of the purchase of the CBW Real Estate Investments VII limited partnership and Griffin Real Estate Fund limited partnership, until the date the damages are paid to the Claimants Luella and Richard Eggenberger;
4. Respondents Askar Corporation and James Kuitu shall be and hereby are jointly and severally liable for and shall pay to the Claimants Luella and Richard Eggenberger, attorney's fees in the amount of Twenty Three Thousand Dollars and No Cents (\$23,000.00). The arbitrators awarded attorney's fees under the authority of Minn. Stat. 8.31, subd. 3a, the Minnesota Consumer Fraud Act, and case law;
5. The claim for punitive damages is denied;
6. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for herein.

FORUM FEES

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

4 sessions X \$750 = \$3000 minus hearing session deposit of \$750 = net \$2250 due.

Forum fees Assessed Against Respondent Askar Corporation in the amount of \$2250.

NASD AWARD 91-02093

PAGE 4 of 4

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

By The Arbitration Panel:

Dated:

Cassandra Mihalchick, Esq.
Cassandra Mihalchick, Esq., Chairperson
Public Arbitrator

Aug. 20, 1992

Katherine M. Merrill
Public Arbitrator

Fred J. Souba
Industry Arbitrator

Date Award Served By The NASD: _____

NASD AWARD 91-02093
PAGE 4 of 4

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

By The Arbitration Panel:

Dated:

Cassandra Mihalchick, Esq., Chairperson
Public Arbitrator

Katherine M. Merrill
Katherine M. Merrill
Public Arbitrator

August 18, 1992

Fred J. Souba
Industry Arbitrator

Date Award Served By The NASD: August 24, 1992

NASD AWARD 91-02093

PAGE 4 of 4

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

By The Arbitration Panel:

Dated:

Cassandra Mihalchick, Esq., Chairperson
Public Arbitrator

Katherine M. M...
Public Arbitrator

Fred J. Souza
Fred J. Souza
Industry Arbitrator

8-14-92

Date Award Served By The NASD: _____