

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Mary A. and Claude K. Sims :

Claimants :

vs. :

Integrated Resources Equity Corporation :
Integrated Resources Investment Center, Inc. :
Henry Miller :

Respondent :

CASE #91-02776
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 4, 1991, Claimants, Mary A. and Claude K. Sims, who appeared Pro Se, alleged that Respondent, Henry Miller, a registered representative of Respondent, Integrated Resources Equity Corporation recommended and induced Claimant, Mary A. Sims to invest \$43,000.00 in the Kemper High Yield Fund by misrepresenting its value; its potential risk of loss and withholding relevant facts about the type of investment, at which time, Claimant, Mary A. Sims was led to believe the investment was a Certificate of Deposit equivalent. Claimant, Mary A. Sims further alleged that Respondents promised her the benefits of a high dividend payment but failed to notify her of the exposure of principal fluctuation. Claimant, Mary A. Sims contended that this investment was unsuitable because it represented more than two-thirds of her investable funds and Claimant, Mary A. Sims had limited investment experience, therefore, she relied on the guidance of Respondent, Henry Miller. Claimant, Mary A. Sims further contended that when she liquidated the account on June 21, 1991 the value of the investment had dropped to \$33,872.00. Claimant, Mary A. Sims asserted that Respondents recommendation of the investment was unsuitable for her investment needs and their inappropriate handling of the account, caused Claimants to sustain losses.

Respondents, Integrated Resources Equity Corporation, by and through their in-house counsel, Mark Quinn, Esq. filed a Motion to Dismiss, whereby, they maintained that Claimants, Mary A. and Claude K. Sims have incorrectly identified Respondent, Integrated Resources Equity Corporation as the entity which sold the Kemper

Fund in question. Respondent, Integrated Resources Equity Corporation further maintained that Claimant, Mary A. Sims' purchase was in fact made through another entity named Integrated Resources Investment Centers, Inc., therefore, Respondent, Integrated Resources Equity Corporation should be dismissed from this proceeding. Respondent, Integrated Resources Equity Corporation submitted a Statement of Answer in the event they were not dismissed and contended that Claimant, Mary A. Sims was provided with all relevant information including a prospectus, which disclosed all the risks of the Kemper High Yield Fund, prior to the purchase. Respondent, Integrated Resources Equity Corporation further contended that Respondent, Henry Miller explained the interrelationship between increased return and increasing risk, which Claimant, Mary A. Sims acknowledged understanding by her execution of the Investment Acknowledgement Form. Respondent, Integrated Resources Equity Corporation asserted that at the time of Claimant, Mary A. Sims purchase, she advised Respondent, Henry Miller that her primary goal was a desire to earn a greater return from her invested capital. Respondents, Integrated Resources Equity Corporation and Integrated Resources Investment Centers, Inc. further asserted that Claimant, Mary A. Sims was aware of the risks and knowingly accepted them in an attempt to generate a greater yield, therefore, Respondents are not liable.

Respondent, Henry Miller, who appeared Pro Se, maintained that on September 14, 1988 Claimant, Mary A. Sims contacted him to request information regarding alternative investments that would provide a high yield and income on a monthly basis, at which time, Claimant, Mary A. Sims had been investing in Mutual Funds since July 8, 1985. Respondent, Henry Miller further maintained that he ascertained Claimant, Mary A. Sims investment history and investment goals prior to discussing any investments. Respondent, Henry Miller contended that he went over different investment alternatives and provided Claimant, Mary A. Sims with all relevant information about the Kemper High Yield Fund including a prospectus and informed her that unlike a Certificate of Deposit, the principal fluctuated, at which time, Claimant elected to invest in the Kemper High Yield Fund because at the time monthly income was her primary investment goal. Respondent, Henry Miller further contended that Claimant, Mary A. Sims had been in this same fund for over three years and had received monthly statements showing share price fluctuations, therefore, Claimant, Mary A. Sims was well informed about the Kemper investment and Respondent, Henry Miller cannot be held liable for her investment decision.

Claimants replied to the Motion to Dismiss and clarified that they wish to name both Integrated Resources Equity Corporation and Integrated Resources Investment Centers, Inc. as Respondents to their Statement of Claim.

RELIEF REQUESTED

Claimants, Mary A. and Claude K. Sims requested \$9,128.00 in actual damages plus the sum of \$1,294.00 representing accountant's fees and other costs.

Respondents, Integrated Resources Equity Corporation and Integrated Resources Investment Centers, Inc. requested the claim be dismissed in its entirety and they be awarded costs and attorney's fees.

Respondent, Henry Miller requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Kim Trowbridge Buckley, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 16, 1991, by the Respondent, Henry Miller on November 27, 1991 and not by the Respondents, Integrated Resources Equity Corporation and Integrated Resources Investment Centers, Inc. as required by Sections 12 & 13 of the NASD, Inc. Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Integrated Resources Investment Centers, Inc. and Henry Miller are jointly and severally liable and shall pay to the Claimants, Mary A. and Claude K. Sims the sum of \$8,025.00 in damages.
2. Respondents, Integrated Resources Investment Centers, Inc. and Henry Miller are jointly and severally liable and shall pay to the Claimants, Mary A. and Claude K. Sims simple interest at the rate of 9% per annum from June 21, 1990 to date of payment of the award.
3. The claims of Claimants, Mary A. and Claude K. Sims against Respondent, Integrated Resources Equity Corporation are dismissed.
4. The parties shall bear their respective costs, including attorney's fees.

5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Mary A. and Claude K. Sims shall be retained by the NASD, Inc. Respondents, Integrated Resources Investment Centers, Inc. and Henry Miller are jointly and severally liable and shall pay to the Claimants the sum of \$150.00, as reimbursement.

AFFIRMATION

I, **KIM TROWBRIDGE BUCKLEY**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION ~~1991~~ AUG 04 1992