

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Norman and Tonia Nisen :

Claimants :

vs. :

Kirlin Securities, Inc. :

Respondent :

CASE #91-02922
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 20, 1991, Claimants, Norman and Tonia Nisen, who appeared Pro Se, alleged that Respondent, Kirlin Securities, Inc. failed to follow their explicit written instructions to purchase a CMO bond with a minimum yield of 9.18% and a maximum maturity of 3 1/2 years. Claimants further alleged that in late December 1990 they contacted, and later purchased, an investment with Respondent when they responded to a radio advertisement, at which time they informed Respondent they did not want a long term investment. Claimants contended that Respondent's, Executive Vice President, Michael Stein informed them that Respondent Kirlin Securities, Inc. had an investment that matured 3 1/2 years and yielded 9.18%. Claimants further contended they received descriptive literature about the investment and IRA applications from Respondent, which they returned with two checks and their applications, in addition to, their explicit written instructions. Claimants asserted that when they received their purchase confirmation, it reflected a CMO bond investment with a maturity date of 2017, well beyond their maximum maturity of 3 1/2 years. Claimants further asserted they informed Respondent, Kirlin Securities, Inc. of their failure to follow Claimant's instructions and demanded a full refund plus accrued interest. Claimants further asserted that their account statements reflected the cancellation request but also contained annual fees and termination charges for both accounts. Claimants further alleged that they have requested return of all charges and all losses of money market interest, but have yet to receive the full amount.

Respondent, Kirlin Securities, Inc. by and through Robert A. Paduano, Senior Vice President, Compliance Officer, maintained that Claimants, Norman and Tonia Nisen became customers in January 1991

when they rolled over their IRA accounts to Respondent's clearing broker PaineWebber, Inc. Respondent further maintained that they purchased a CMO bond for Claimants, which was of the short term nature, and Respondent provided Claimants with the complete details regarding the investment, including all relevant documentation. Respondent contended that they informed Claimants that they would be purchasing a 4.4 year average life bond that would be returning principal from July 1994 through its estimated final maturity of June 1998. Claimants further contended that when Claimants received a confirmation of the investment which showed a final maturity date of 2017, they were advised that this date was for regulatory reasons, as well as, being the date of absolute final possible repayment of the mortgages collateralizing the bond. Respondent asserted that when Claimants informed them they did not want the bonds, Respondents felt because Claimants were not comfortable with this investment, that the transaction would simply be reversed and they would not subject Claimants to any market variation. Respondent further asserted that they wired Claimants funds and have since forwarded the interest when such interest was credited at the end of the month to their accounts. Respondent argued that Claimants have received every invested dollar they started with plus interest with the exception of the termination IRA fees which Respondent does not receive or benefit from in any way. Respondent further argued that Claimants were treated in a proper manner.

RELIEF REQUESTED

Claimants, Norman and Tonia Nisen requested \$265.67 in actual damages plus interest together with \$500.00 Punitive damages and costs.

Respondent, Kirlin Securities, Inc. requested the claim be denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Edward J. Bodner, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on September 18, 1991 and by the Respondent on November 8, 1991.

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. Respondent, Kirlin Securities, Inc. is liable and shall pay to the Claimants, Norman and Tonia Nisen the sum of \$150.00 in damages.
2. The Claimant's request for Punitive damages is denied.
3. The Claimant's request for interest is denied.
4. The parties shall bear their respective costs.
5. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Norman and Tonia Nisen shall be retained by the NASD, Inc. Respondent, Kirlin Securities, Inc. shall pay to the Claimants, the sum of \$15.00 as partial reimbursement.

AFFIRMATION

I, EDWARD J. BODNER, 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: April 10, 1992