

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William and Doris Skarnulis
William Skarnulis, IRA Account
Doris Skarnulis, IRA Account
William Skarnulis Living Trust

91-03947

Name of Respondents

USA Financial Group, Inc.
William L. Davis
James A. Kirkland
Diversified Financial Consulting

REPRESENTATION

For Claimants: David M. Foster, Esq. a sole practitioner.

For Respondents, Diversified Financial Consulting, USA Financial Group, Inc., James A. Kirkland and William L. Davis: Walter L. Baumgardner, Esq. of Musilli & Baumgardner, P.C.

CASE INFORMATION

Statement of Claim filed: December 12, 1991.

Claimants, William and Doris Skarnulis' Submission Agreement signed on: December 6, 1991.

Claimant, William Skarnulis, IRA Account's Submission Agreement signed by William Skarnulis, Trustee on: January 28, 1993.

Claimant, Doris Skarnulis, IRA Account's Submission Agreement signed by Doris Skarnulis, Trustee on: January 28, 1993.

Claimant, William Skarnulis, Living Trust's Submission Agreement signed by William Skarnulis, Trustee on: December 21, 1992.

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Statement of Answer filed by Respondents, Diversified Financial Consulting, USA Financial Group, Inc. and James A. Kirkland on: April 23, 1992.

Respondent, Diversified Financial Consulting's Submission Agreement signed on: June 30, 1992.

Respondent, James A. Kirkland's Submission Agreement signed on: June 30, 1992.

Respondent, USA Financial Group, Inc. did not submit an executed Submission Agreement.

Respondent, William L. Davis did not submit an executed Submission Agreement or a Statement of Answer but appeared at the hearings.

HEARING INFORMATION

Pre-Hearing Conference: October 20, 1992

Hearing Dates/Sessions: November 3, 1992 - Two Sessions
 November 4, 1992 - Two Sessions
 November 16, 1993 - Two Sessions
 January 17, 1994 - One Session

Hearing Location: American Arbitration Association - Southfield, MI.

CASE SUMMARY

Claimants allege that they became involved with the Respondents when the Respondents sponsored an investment seminar. Claimants allege that they were given a questionnaire designed to analyze their investments, savings and financial concerns. Claimants allege that the analysis revealed that the level of risk they were willing to accept was medium. The analysis further revealed that all their present investments were in the medium, low or very low risk categories.

Claimants allege that the analysis recommended the purchase of real estate limited partnerships, government securities, a coin limited partnership and a real estate tax shelter. Claimants allege that they emphasized to the Respondents that they did not wish to take risks. Claimants assert that one of the investments recommended by Respondents was a limited partnership named 21 Century Venture Partners (21 Century) which was speculative and risky and which went bankrupt four years later. Claimant allege that Respondents recommended another limited partnership named Occidental Development Fund IV and that this

investment was also risky and filed for bankruptcy.

Claimants allege that the Respondents also recommended a limited partnership called Secured Investment Resources and that this investment was risky and illiquid. Claimants allege that the dividend was discontinued and due to the lack of liquidity and bad real estate market, the investment is worthless. Claimants allege that the Respondents recommended a diversified management company named International Investors, Inc. which purchased shares in gold mining companies. Claimants allege that they sold their shares of this investment at a great loss. Claimants allege that the Respondents recommended an equipment leasing partnership called Gemini Equipment Partners. Claimants allege that they were advised that the equipment leased by Gemini had dramatically declined in value and that since there is no market to liquidate this partnership, it is worthless. Claimants allege that the Respondents also recommended the purchase of Phoenix Leasing and Ulysses Leasing Trust, both equipment leasing companies and a coin partnership named Kagin's Numismatic Investments.

Respondents, USA Financial Group, Inc., James A. Kirkland and Diversified Financial Consulting submitted a Response in which they neither admitted nor denied the allegations contained in the statement of claim.

RELIEF REQUESTED

Claimants requested damages in the amount of \$137,508.25, treble damages, punitive damages, exemplary damages and attorney's fees.

Respondents, USA Financial Group, Inc., James A. Kirkland and Diversified Financial Consulting requested that the claims be dismissed.

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.

Respondents, USA Financial Group, Inc., James A. Kirkland, Diversified Financial Consulting and William L. Davis asserted a Motion to Dismiss all claims and filed it with their statement of answer. Respondents alleged that the purchases complained of were made in 1986, 1987 and 1989. Respondents asserted that the United States Supreme Court ruled that all security fraud cases must be dismissed unless they are brought within three years of the purchase of the security or within one year of the discovery of the fraud. Respondents

asserted that with one exception, all the purchases were made five years ago.

The arbitrators denied the Motion without prejudice on October 8, 1992.

Respondents asserted a Motion to Dismiss on October 12, 1993 alleging that all applicable statutes of limitations have expired and that the claim must be dismissed on the doctrine of laches because of the unreasonable delay in bringing the claim.

Claimants replied to the Motion on October 21, 1992 stating that the applicable statute of limitations is six years, not three as asserted by the Respondents and that Michigan Courts have held that arbitrators do not have to follow the statute of limitations of the forum state in their deliberations.

Respondents filed a response to Claimants' Reply on October 27, 1992 stating that the Claimants misstate the rule regarding the statute of limitations and arbitrators. Respondents asserted that a disregard of the applicable statute of limitations is manifest disregard of the law and is one of the means by which an arbitration award may be appealed.

The arbitrators denied the Respondents' Motion to Dismiss on November 2, 1992.

AWARD

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

- 1) Respondents, Diversified Financial Consulting, Inc., James A. Kirkland and William L. Davis are hereby jointly and severally liable and shall pay to the Claimants as follows:
 - a) William and Doris Skarnulis:

Out of Pocket losses	-	\$26,700.00
Attorneys fees	-	\$ 8,900.00
 - b) William and Doris Skarnulis IRAs:

Out of Pocket losses	-	\$52,239.00
Attorneys fees	-	\$17,413.00
- 2) The request for punitive damages, exemplary damages and treble damages are hereby denied.

- 3) Attorneys fees (1/3 contingency fee permitted under Michigan law) are awarded pursuant, inter alia, to MCLA 541.810(a), Prince v. Heritage, 109 Mich App 189 (1981), where the Court stated that "it is unfair, when broker misconduct is found to only return the customer's loss - less attorney fees incurred to recover what never should have been lost in the first place. The only way to stop misconduct is to take the profit out of it."

FORUM FEES

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

\$250.00	Non-refundable filing fee
\$300.00	Pre-hearing conference fee (October 20, 1992)
\$7,000.00	Hearing session fees (7 sessions x \$1,000.00)

- 1) Total forum fees in the amount of \$7,550.00 are hereby assessed against the Respondents, Diversified Financial Consulting, Inc., James A. Kirkland and William L. Davis.

Respondents are directed to re-imburse to the Claimants the amount of \$1,250.00 Claimants previously deposited with the NASD, Inc.

Respondents are directed to pay the balance of \$6,300.00 to the NASD, Inc.

Concurring Arbitrator's Signature
Name

Public Chairperson


Carole M. Crosby, Esq.

Date of Decision: February 11, 1994

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Industry Arbitrator


John R. Main

Date of Decision: February 11, 1994

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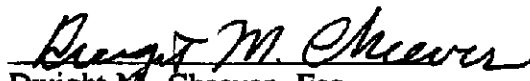
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