

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

 In the Matter of the Arbitration Between :

Myron Kail :

Claimant :

vs. :

Carl Roba :

Respondent :

CASE #91-04083
 AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 24, 1991, Claimant Myron Kail by and through his counsel Thomas W. Donohue, Esq. of Titus, Brueckner & Barry, Scottsdale, Arizona, alleged that as an unsophisticated investor with no formal training in business economics or finance and due to his lack of sophistication, he placed his complete trust and confidence in Respondent Carl Roba's expertise and integrity. Claimant further alleged he established an IRA with Respondent at the Beverly Hills Prudential Bache Securities, Inc. office and in late 1988, Respondent became an Account Executive at PaineWebber, Inc., at which time, Claimant transferred his IRA to PaineWebber. Claimant contended that he stressed to Respondent that he desired conservative management of his account because he could not afford any loss of principal, at which time, Respondent assured Claimant, both orally and in writing, that Claimant's account generated income of approximately \$1,000.00 a month without decreasing the principal in any way. Claimant further contended that it is now known that 55% of the \$1,000.00 purported income consisted of a return of principal from Claimant's IRA. Claimant asserted that upon Respondent's recommendation he purchased 20,000 units of Pegasus Aircraft Partners, L.P. ("Pegasus") whereby Respondent failed to disclose the risks involved or to inform him of safer alternative investments. Claimant further asserted that Respondent violated Arizona Securities Act, Federal Securities Anti-Fraud Provisions, Section 10(b), Rule 106-5 in that Respondent was negligent, committed fraud and breached his fiduciary duty to Claimant.

Respondent Carl Roba, who appeared Pro Se, maintained that he set up an IRA account for Claimant Myron Kail for tax purposes and he placed Claimant's money into investments that Prudential Bache Securities, Inc. stated were suitable for this type of account.

Respondent further maintained that he disclosed all fees and commissions to Claimant, in addition to the fact that it would be very difficult to maintain \$1,000.00 monthly income whereby some of the principal would be used to maintain the difference. Respondent contended that the Pegasus investment was a long term conservative investment that would pay Claimant double digit income whereby Claimant was provided with two prospectuses and advised of the securities minimal liquidity. Respondent further contended that he sold Claimant Proprietary Investments from Prudential Bache and PaineWebber at the guidance of these firm, thus, he should not be held liable for what he believed to be an honest representation of the investments from these firms.

RELIEF REQUESTED

Claimant Myron Kail requested \$10,000.00 in actual damages plus Treble damages and \$3,500.00 in attorney's fees together with post-award interest at the legal rate of 10% per annum and reimbursement of the NASD filing fee.

Respondent Carl Roba 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, Renee' P. Roelants, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 18, 1991 and by the Respondent on March 20, 1992.

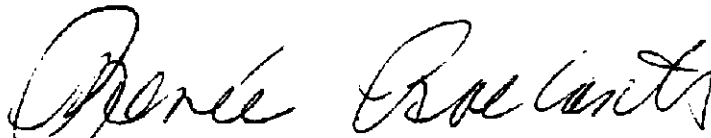
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Carl Roba's request for a Hearing is denied.
2. Respondent Carl Roba is liable and shall pay to the Claimant Myron Kail the sum of \$7,000.00 in actual damages.
3. The Claimant's request for interest is denied.
4. The Claimant's request for Treble damages is denied.
5. The Claimant's request for attorney's fees is denied.

6. The parties shall bear their respective costs.
7. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Myron Kail shall be retained by the NASD, Inc. Respondent Carl Roba is liable and shall pay to the Claimant the sum of \$150.00 as reimbursement.

AFFIRMATION

I, **RENEE' P. ROELANTS**, 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: November 2, 1992