

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

**Robert S. Lee and Claire Lee**

**92-02176**

**Name of Respondents**

**Independent Financial Consultants, Inc.  
Thomas E. Strickland**

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**REPRESENTATION**

**For Claimant Robert S. Lee and Claire Lee ("Lee"): William J. Schifino, Jr., Esq. of Williams, Reed, Weinstein, Schifino & Margione, P.A.**

**For Respondents: Independent Financial Consultants, Inc. ("Independent") and Thomas E. Strickland ("Strickland"): Terrance A. Bostic, Esq. of Bush, Ross, Gardner, Warren & Rudy, P.A.**

**CASE INFORMATION**

**Statement of Claim filed on June 30, 1992. Claimant's Submission Agreement signed on July 20, 1992.**

**Respondents' Independent and Strickland, Statement of Answer filed on September 28, 1992. Respondents' Independent and Strickland, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code.**

### **HEARING INFORMATION**

On July 15, 1993, Tampa, Florida, a hearing lasting two (2) sessions was conducted.

### **CASE SUMMARY**

Claimants alleged that they informed Respondents that their primary investment goal was protection of their principal; that Claimants relied solely on Respondents advice, discretion and recommendations; that Respondents occupied a position of trust and confidence with respect to Claimants and at all times had control of the account in question; that Respondents made false representations of material fact which were designed to induce Claimants to establish and maintain the account with Respondents; that the account was not handled in accordance with the Claimants' objectives; and that Respondents actions constituted violations of the anti-fraud provision of the Florida Securities Act, breach of fiduciary duty, negligence and common law fraud.

Respondents denied all allegations of wrongdoing and alleged that the Claimants were experienced and sophisticated investors; and that Respondents implemented a sound, conservative strategy suitable with the Claimants' investment objectives of guaranteed annual income, appreciation and protection of principal.

Respondents alleged the affirmative defenses of: that the Statement of Claim failed to comply with NASD arbitration guidelines; failure to state a claim upon which relief may be granted; the damages resulted in whole or part by Claimants' own acts or omissions; that Claimants ratified, approved and authorized all of the Respondents' actions, therefore, Claimants are estopped from recovery.

### **RELIEF REQUESTED**

Claimants requested rescission of the complained of investments and/or compensatory damages, punitive damages, interest, costs, and reasonable attorneys' fees.

Respondents requested dismissal of the Statement of Claim.

### **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 and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Independent and Strickland, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$201,314.00, plus interest at the legal rate of 12% per annum from June 24, 1991 to the date of payment of this Award.
2. Respondents, Independent and Strickland, are found liable, jointly and severally, and shall pay to the Claimants the further amount of \$9,517.50 for attorney's fees pursuant to Section 517.211, Florida Statutes.
3. Claimants' request for punitive damages is hereby denied.

### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,200 (2 sessions x \$600).

1. Claimants are hereby assessed \$1,200 for which the NASD shall retain the \$600.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$600.00 payable to the National Association of Securities Dealers, Inc.

2. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimants.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

Name	Public/Industry
<u>/s/</u>	
<u>Thomas E. Greef</u>	Public/Chairman
<u>/s/</u>	
<u>Samuel M. Niden</u>	Industry/Panelist
<u>/s/</u>	
<u>John F. Howes</u>	Public/Panelist

Date of Decision: September 27, 1993