

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Public

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In the Matter of the Arbitration Between

Name of Claimant

Pamela D. Kinion

92-02704

Name of Respondents

Harry Bartolomei  
Securities America Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 12, 1992, Claimant Pamela D. Kinion who appeared Pro Se, alleged that during the first week of February, 1988 Respondent Harry Bartolomei, Managing Director of Respondent Securities America Inc. purchased on Claimant's behalf eight units of Leasetec Income Fund 5, a limited partnership, for \$2,000.00. Claimant further alleged that although she was aware that she would have no direct access to this money, Respondent Harry Bartolomei did not inform Claimant of the nature of a limited partnership investment, and was therefore, surprised to discover earlier this year that she could not transfer her interest in the partnership to Fidelity Investments or liquidate it in any other way in an attempt to consolidate her retirement assets. Claimant contended that Respondent Harry Bartolomei had no legal right to enter her into a limited partnership without explaining the nature of such partnerships to her and obtaining specific signature authority from her as evidence of this, therefore, Respondents are liable for her loss.

Respondent Securities America Inc. by and through Steven F. McWhorter, Senior Vice President, maintained that in February, 1988 the month which Claimant Pamela D. Kinion alleged that Respondent Harry Bartolomei purchased 8 units of Leasetec on her behalf, he was not a registered representative of Respondent Securities America Inc. Respondent Securities America Inc. further maintained that it has no record of new account forms or customer agreements with Claimant and no record of purchase of securities by Claimant through Respondent Securities America Inc. prior to February, 1988 and Claimant has never been a customer of Respondent Securities America Inc. Respondent Securities America Inc. contended that the purchase was made prior to the association of Respondent Harry Bartolomei with Respondent Securities America Inc.; therefore there is no duty or obligation of Respondent Securities America Inc. to supervise Respondent Harry Bartolomei before he became associated

with Respondent Securities America Inc.

Respondent Harry Bartolomei who appeared Pro Se maintained that Claimant Pamela D. Kinion was well aware of the nature of this investment and at the time of the investment Claimant had an extremely close romantic relationship with Respondent Harry Bartolomei's son, who also had a First Trust with an earlier Leasetec partnership as well as others Claimant knew. Respondent Harry Bartolomei further maintained that Claimant had no financial loss and does not claim one, and an examination of her last statement indicates an ERISA value of \$3,163.89. Respondent Harry Bartolomei contended that Claimant can consolidate her retirement assets and per Claimant's IRA application First Trust is authorized to invest funds based on written authorization from either Claimant or the registered representative. Respondent Harry Bartolomei further contended that the investment has performed well and is still distributing.

#### **RELIEF REQUESTED**

Claimant Pamela D. Kinion requested \$2,000.00 in actual damages.

Respondent Harry Bartolomei requested the claim be denied.

Respondent Securities America Inc. requested the claim be dismissed and all costs, including attorney's fees be assessed against Claimant.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas E. Mulvihill, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 6, 1992, by the Respondent Harry Bartolomei on November 7, 1992 and by the Respondent Securities America Inc. on November 11, 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. The claims of Claimant Pamela D. Kinion against Respondents Securities America Inc. and Harry Bartolomei are dismissed.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Pamela D. Kinion shall be retained by the NASD.

Page 3  
Award # 92-0274

**AFFIRMATION**

I, Thomas E. Mulvihill, 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.

  
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Signature of Arbitrator

Date of Decision: 5/21/92

NASD DATE OF DECISION: June 2, 1993