

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Timothy and Penelope Kopp

92-03048

Name of Respondent

First American Biltmore Securities, Inc.

REPRESENTATION

Claimants. Timothy and Penelope Kopp were represented by Michael Salcido, Esq., Scottsdale, Arizona.

Respondent. First American Biltmore Securities, Inc. was represented by Gordon Nevers.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on September 9, 1992.

Claimants. Timothy and Penelope Kopp's Submission Agreement was signed on June 1, 1992.

The Statment of Answer was filed with the NASD by Respondent, First American Biltmore Securities, Inc. on January 20, 1993.

Respondent. First American Biltmore Securities, Inc. did not file an executed Submission Agreement with the NASD.

HEARING INFORMATION

The hearing was held on March 29, 1993 and lasted for two (2) sessions.

The hearing location was Scottsdale, Arizona.

CASE SUMMARY

Claimants, Timothy and Penelope Kopp ("the Kopps") alleged that they lost over \$20,000 from the purchase of an unregistered security recommended and sold to them by Respondent, First American Biltmore Securities, Inc. ("First American"). The Kopps alleged that they were told the investment was a low risk, high grade security when, in fact, it was an unregistered, high risk, unsecured investment note. The Kopps alleged that the note was now in default and their investment was lost. The Kopps alleged they were unsophisticated, conservative investors and were not traders or speculators.

First American allegedly sold the Kopps a \$20,000 investment note issued by an affiliate, Shillelagh Ventures, Chartered. This note promised an annual rate of return of 16.5%, with interest to be paid at \$275 per month and the principal was due and payable on January 23, 1990. This note was replaced by another note due on October 23, 1990. The Kopp's broker, Thomas Ballentyne, ("Ballentyne") gave the Kopps his personal written guarantee for the \$20,000 principal balance on April 24, 1989. This practice is strictly prohibited by NASD rules.

The foregoing facts allegedly supported a claim for violations of A.R.S. Section 44-1841 sale of unregistered securities, A.R.S. Section 44-1891, securities fraud, common law fraud, unsuitable recommendations, negligent misrepresentation, breach of fiduciary duty, breach of contract, negligence, negligent supervision or failure to supervise and racketeering under A.R.S. Section 13-2301 (D) (4).

First American denied the allegations of the Claim and asserted that the security allegedly purchased by the Kopps was not sold by First American, but was sold by the issuer and its agent directly without any involvement by First American. The security was alleged to be exempt from the registration provisions of the Arizona Securities Law. First American asserted various affirmative defenses including, but not limited to, waiver, estoppel, laches, ratification,

payment, misrepresentation, assumption of risk and unclean hands.

RELIEF REQUESTED

The Kopps requested compensatory damages of \$20,000, treble damages under A.R.S. Section 13-2314, punitive damages of \$50,000, rescission of the sale; costs and attorney's fees pursuant to A.R.S. Section 12-341.01, 13-2314 and 44-2001, pre and post judgment interest and such other relief as the panel deemed just.

First American requested dismissal of the claim, and award of costs and attorney's fees, interest and such other relief as the panel deemed just and proper.

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 the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. First American is liable for and shall pay to the Kopps, compensatory damages in the sum of thirty one thousand dollars and no cents (\$31,000.00), which sum includes interest:
2. The Kopps's claims for punitive and treble damages are denied and dismissed in their entirety; and
3. Other than Forum Fees which are addressed below, the parties are each directed to bear their own costs, expenses and attorney's fees incurred in this matter.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit previously deposited with the NASD by the Kopps. First American is to directly reimburse the Kopps for this sum of \$950.00 and is assessed additional Forum Fees of \$750.00. Forum fees were calculated at the

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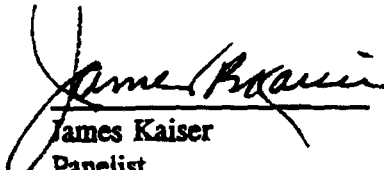
rate of \$750.00-per hearing session for two (2) sessions.

Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

Dated: _____

Dated: _____

 Dated: May 7, 1993
James Kaiser
Panelist
Industry Arbitrator

Date award served by the NASD: 5-19-93

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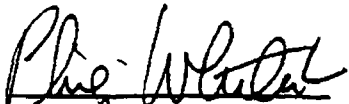
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Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name


Philip B. Whitaker, Esq.

Chairperson

Public Arbitrator

Dated: 10 May 1993

Glenn Rosenthal, Esq.

Panelist

Public Arbitrator

Dated: _____

James Kaiser

Panelist

Industry Arbitrator

Dated: _____

Date award served by the NASD: 5-19-93

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Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

Dated: _____

Philip B. Whitaker, Esq.
Chairperson
Public Arbitrator



Dated: 5-18-93

Glenn Rosenthal, Esq.
Panelist
Public Arbitrator

Dated: _____

James Kaiser
Panelist
Industry Arbitrator

Date award served by the NASD: 5-19-93