

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Alan and Paula Taylor  
The Tower Consulting Group, Inc.

vs.

Case #  
92-04332

Name of Respondents

Titan/Value Equities Group, Inc.  
Oxford Consolidated Corporation  
Oxford Capital Securities, Inc.  
AJF Financial Services  
James A. Sehn  
Samuel O. Forson  
Heyward H. Mitchell  
Andrew J. Friedman

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**REPRESENTATION**

For Claimants, Alan and Paula Taylor and The Tower Consulting Group, Inc.: Vincent L. Briccetti, Esq. of the law firm of Briccetti & Calhoun, located in White Plains, New York.

For Respondent, Titan/Value Equities Group, Inc.: Elliot Cohen, Esq. of the law firm of Parker, Chapin, Flattau & Klimpl, located in New York, New York.

For Respondents, Andrew J. Friedman and AJF Financial Services: Stephen B. Wexler, Esq. of the law firm of Wexler & Burkhart, P.C., located in Garden City, New York.

**CASE INFORMATION**

Statement of Claim filed: December 28, 1992.

Claimants, Alan Taylor's and Paula Taylor's, Submission Agreement signed on: December 21, 1992.

Claimant, The Tower Consulting Group, Inc.'s, Submission Agreement signed on: December 21, 1992.

Statement of Answer filed by Respondent, Titan/Value Equities Group, Inc., on: February 25, 1993.

Respondent, Titan/Value Equities Group Inc.'s, Submission Agreement signed on: January 11, 1993.

Joint Statement of Answer filed by Respondents, Andrew J. Friedman and AJF Financial Services, on: March 4, 1993.

Respondent, Andrew J. Friedman's, Submission Agreement signed on: March 29, 1993.

Respondent, AJF Financial Services', Submission Agreement signed on: March 29, 1993.

Respondents, Oxford Consolidated Corporation, Oxford Capital Securities, Inc., James A. Sehn, Samuel O. Forson, and Heyward Mitchell did not submit a Statement of Answers nor execute Submission Agreements.

### **HEARING INFORMATION**

Pre-Hearing Conference: November 11, 1993 / One session

Hearing Dates/Sessions: November 15, 1993 / Two sessions  
November 16, 1993 / Two sessions  
January 24, 1994 / Two sessions  
January 25, 1994 / Two sessions  
January 31, 1994 / Two sessions

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33 Whitehall Street, New York City, New York.

### **CASE SUMMARY**

The Claimants alleged that they invested \$200,000.00 in a debt security issued by Respondent Oxford Consolidated Corporation ("Oxford Consolidated") which took the form of an investment agreement, whereby Oxford Consolidated guaranteed to pay the Claimants \$220,000.00 two weeks later. The Claimants further alleged that they only received \$20,000.00 from Oxford Consolidated and that they suffered an out-of-pocket loss of \$200,000.00. The Claimants further alleged that they made the investment at the urging of Respondent, Andrew Friedman ("Friedman"), the manager of the Nyack, New York office of Respondent Titan/Value Equities Group, Inc. ("Titan"), who represented to the Claimants that Oxford Consolidated was a sound company and that there would be minimal risk in making the investment. The Claimants also alleged that at the time Friedman recommended the investment Oxford Consolidated was undergoing severe financial and legal difficulties which both Titan and Friedman knew or should have known about. Specifically, the Claimants alleged that Oxford Consolidated's wholly-owned

subsidiary, Respondent Oxford Capital Securities, Inc. ("Oxford Capital"), had been suspended by the NASD from membership for substantially understating its liabilities in reports filed with the NASD.

The Claimants maintained that Titan is responsible for the loss suffered by the Claimants due to Friedman's negligence, breach of contract, breach of fiduciary duty, fraud and solicitation of an unsuitable investment. The Claimants further maintained that Titan is also liable for its failure to supervise Friedman and that Friedman's failure to disclose the financial and legal difficulties of Oxford Consolidated and Oxford Capital was grossly negligent and reckless, if not outright fraudulent. The Claimants further maintained that Friedman and the company he controls, AJF Financial Services, Inc. ("AJF Financial"), are separately liable based on representations Friedman made to the Claimants in his capacity as president of AJF Financial that the Claimants may hold him personally liable for any balance owed by Oxford Consolidated.

The Claimants maintained that Oxford Consolidated, Oxford Capital, Respondent James A. Sehn ("Sehn"), who is the President of Oxford Consolidated and Oxford Capital, Respondent Samuel O. Forson ("Forson"), who is the Vice President of Oxford Consolidated and Oxford Capital, and Respondent Heyward Mitchell ("Mitchell"), who is an employee of Oxford Consolidated and Oxford Capital, are liable for fraud and misrepresentation and for selling unregistered securities to the Claimants.

Respondent Titan maintained that the loan made by the Claimants to Oxford Consolidated was usurious and that the Claimants' losses were caused by their own unclean hands, bad faith and greed. Respondent Titan further maintained that Friedman's unauthorized recommendation of the illegal loan was outside the scope of his authority at Titan. Respondent Titan further maintained that the Claimants failed to specifically allege any false statements that Friedman made which lured them into making the loan and that the Claimants were sophisticated investors and they should not have reasonably relied on the alleged representations Friedman made. Respondent Titan also maintained that they properly supervised Friedman at all times. Respondent Titan also made a motion to strike certain statements made in the Statement of Claim.

Respondents Friedman and AJF Financial maintained that the \$200,000.00 the Claimants invested was not a debt security, but rather it was issued to Oxford Consolidated as a short term bridge loan, which, as Claimants were advised, Oxford Consolidated would be using in establishing a new business. Respondents Friedman and AJF Financial further maintained that Friedman never recommended the loan to the Claimants, but merely presented it to them and that the Claimants never asked to meet any of Oxford Consolidated's principals nor did they request any financial information about Oxford Consolidated prior to making the loan. Respondents Friedman and AJF Financial also maintained that Friedman's letter to the

Claimants, in which he said he would be personally liable for any balance owed by Oxford Consolidated, was an effort to make the Claimants feel more secure and that he is not legally bound by the letter because there was no consideration for his promise. Respondents Friedman and AJF Financial cross-claimed against the Respondents Oxford Consolidated, Oxford Capital, Sehn, Forson and Mitchell for any and all damages, costs, and fees for which they are held liable.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of not less than \$216,500.00, consequential damages of not less than \$80,000.00, and punitive damages of not less than \$200,000.00. Claimants further requested costs, attorneys fees and such other relief that the panel may deem appropriate.

Respondent Titan requested the dismissal of all claims against it and that all costs be assessed against the Claimants.

Respondents Friedman and AJF Financial requested the dismissal of all claims against them.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the hearing, Respondent Titan withdrew the motion to strike certain statements made in the Statement of Claim.

Respondent AJF Financial made a motion to remove Claimants Alan and Paula Taylor as Claimants in the action. At the hearing, the arbitration panel denied the motion. to Alan Taylor.

Respondent AJF Financial made a motion that it be removed as a Respondent. The arbitration panel considered the request and ruled that it be denied.

### **AWARD**

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

1. In accordance with Section 25 of the *Code of Arbitration Procedure*, the Respondents Oxford Consolidated Corporation, Oxford Capital Securities, Inc., James A. Sehn, Samuel O. Forson, and Heyward Mitchell were served with the Statement of Claimant given an opportunity to respond which they failed to do.

2. In accordance with Section 21 and Section 26 of the *Code of Arbitration Procedure*, the Respondents Oxford Consolidated Corporation, Oxford Capital Securities, Inc., James A. Sehn, Samuel O. Forson, and Heyward Mitchell were given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing.

3. In accordance with Section 29 of the *Code of Arbitration Procedure*, the arbitration panel determined in light of the foregoing information to proceed with the Respondents Oxford Consolidated Corporation, Oxford Capital Securities, Inc., James A. Sehn, Samuel O. Forson, and Heyward Mitchell as parties.

4. Respondent Titan/Value Equities Group, Inc. is liable and shall pay to the Claimants \$16,200.00 plus simple interest at the rate of 6% per annum from January 13, 1992 until the date of payment of the award.

5. Respondents Andrew J. Friedman and AJF Financial Services are jointly and severally liable and shall pay to the Claimants \$48,600.00 plus simple interest at the rate of 6% per annum from January 13, 1992 until the date of payment of the award.

6. Respondents Oxford Consolidated Corporation and Oxford Capital Securities, Inc., James A. Sehn, Samuel O. Forson and Heyward Mitchell are jointly and severally liable and shall pay to the Claimants \$97,200.00 plus simple interest at the rate of 6% per annum from January 13, 1992 until the date of payment of the award.

7. The Claimants' request for punitive damages is denied.

8. Respondents Andrew J. Friedman's and AJF Financial's Cross-Claim against Oxford Consolidated, Oxford Capital, James A. Sehn, Samuel O. Forson, and Heyward Mitchell is dismissed in all respects.

9. Each party shall bear their respective costs, including attorneys' fees.

#### **FORUM FEES**

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

Non-Refundable Claim Filing Fee - \$200.00

Non-Refundable Cross Claim Filing Fee - \$500.00

Pre-Hearing Conference - \$300.00

Hearing Session Fees - \$7,500.00

Total Fees = \$8,500.00

**Forum fees Assessed Against:**

1. The NASD shall retain the \$200.00 claim filing fee previously deposited by the Claimants and Claimant are entitled to a refund in the amount of \$750.00.
2. Respondent Titan/Value Equities Group, Inc. is liable and shall pay to the NASD the sum of \$830.00 to represent forum fees.
3. Respondent Andrew J. Friedman is liable and shall pay to the NASD the sum of \$1,740.00 and \$750.00 to Claimants to represent forum fees.
4. Respondents Oxford Consolidated Corporation and Oxford Capital Securities, Inc., James A. Sehn, Samuel O. Forson, and Heyward Mitchell are jointly and severally liable and shall pay to the NASD the sum of \$4,980.00 to represent forum fees.

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

**ARBITRATION PANEL**

Robert D. Herschmann, Esq.	-	Public Chairperson
C. Anthony Bell	-	Industry Panelist
John P. Libretti, Esq.	-	Public Panelist

Concurring Arbitrator's Signature

  
Robert D. Herschmann, Esq.

Date of Decision: May 31, 1994

Pre-Hearing Conference - \$300.00  
Hearing Session Fees - \$7,500.00  
Total Fees = \$8,500.00

**Forum fees Assessed Against:**

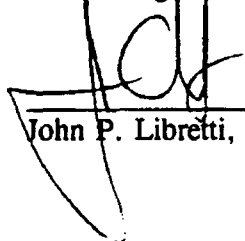
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C. Anthony Bell	-	Industry Panelist
John P. Libretti, Esq.	-	Public Panelist

Concurring Arbitrator's Signature

  
\_\_\_\_\_  
John P. Libretti, Esq.

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

**ARBITRATION PANEL**

Robert D. Herschmann, Esq.	-	Public Chairperson
C. Anthony Bell	-	Industry Panelist
John P. Libretti, Esq.	-	Public Panelist

Concurring Arbitrator's Signature

C. A. Bell  
C. Anthony Bell

Date of Decision: May 31, 1994



STATE OF <sup>N Y</sup>  
COUNTY OF ROCKLAND

S.S.:

On this 10 day of May, 1994, before me personally appeared C. Anthony Bell known to me to be the individual described in and who executed the foregoing instruments and be duly acknowledged to me that he executed the same.

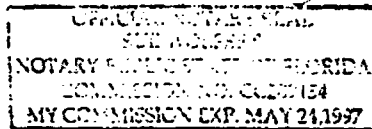
JAMES J. CONCAGH  
Notary Public, State of New York  
No. 461,424  
Qualified in Rockland County  
Commission expires 12/31/95

*James J. Concagh*

STATE OF Florida s.s.:  
COUNTY OF Dade

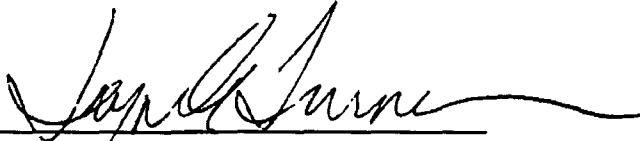
On this 1<sup>st</sup> day of May, 1994, before me personally appeared Robert D. Herschmann known to me to be the individual described in and who executed the foregoing instruments and be duly acknowledged to me that he executed the same.

Shea Sheefer



STATE OF <sup>NEW</sup> JERSEY      S.S.:  
COUNTY OF BERGEN

On this 31<sup>st</sup> day of May, 1994, before me personally appeared John Libretti known to me to be the individual described in and who executed the foregoing instruments and be duly acknowledged to me that he executed the same.

  
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JAYNE E. TURNER, ESQ.