

11/95

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

John and Donna Yankoviz

93-00186

and

Name of Respondents

Hamilton Investments, Inc.;
Robert G. Lorente;
Korn, Womack Stern & Associates, Inc.; and
Dana Field

REPRESENTATION OF PARTIES

John and Donna Yankoviz ("Claimants") were represented by James P. Murphy, Esq. of Berry, Moorman, King & Hudson, located in Detroit, Michigan.

Hamilton Investments, Inc. ("Hamilton") was represented by S. Thomas Weiner, Esq. of Feeney, Kellett & Wiener, located in Bloomfield Hills, Michigan.

Robert G. Lorente ("Lorente") was represented by Stewart C. W. Weiner, Esq. of Maddin, Hauser, Wartell, Roth, Heller & Pesses, P.C., located in Southfield, Michigan.

Korn Womack Stern & Associates, Inc. ("KWS") was represented by Arnold M. Gordon, Esq. of Gordon, Cutler & Hoffman, located in Southfield, Michigan.

Dana Field ("Field") was represented by Andrew J. Munro, Esq. of Munro and Munro, located in Troy, Michigan.

CASE INFORMATION

Statement of Claim filed on: January 19, 1993.

Claimants' Submission Agreement signed: February 10, 1993.

Claimants' First Amended Statement of Claim adding Respondents Korn, Womack Stern & Associates and Dana Field filed: July 16, 1993.

Statement of Answer filed by Respondent Hamilton Investments on: May 3, 1993.
Respondent Hamilton Investments' Submission Agreement signed on: April 29, 1995.
Hamilton's Answer to the First Amended Statement of Claim filed: August 16, 1995.

Respondent Lorente's Answer to the First Amended Statement of Claim filed: August 12, 1993.
Respondent Lorente's Submission Agreement signed on: August 12, 1993.

Statement of Answer filed by Respondent KWS on: October 12, 1993.
Respondent KWS did not file an executed Submission Agreement.

Statement of Answer filed by Respondent Field on: February 17, 1994.
Respondent Field did not file an executed Submission Agreement.

Lorente's Motion to Dismiss filed on: December 3, 1993.
Korn, Womack Stern & Associates' Motion to Dismiss filed December 3, 1993.
Hamilton's Joinder in Lorente's Motion to Dismiss filed on: December 22, 1993.
Claimants' Memorandum Opposing Lorente's Motion to Dismiss filed: January 13, 1994.
Lorente's Response to Claimants' Memorandum in Opposition to Motion to Dismiss filed: February 16, 1994.
Hamilton's Response to Claimants' Memorandum Opposing Lorente's Motion to Dismiss filed: February 16, 1994.
Claimant's Response to Lorente's Memorandum of February 16, 1994 filed: March 14, 1994.
Lorente's Supplemental Brief to Respondents' Motion to Dismiss filed: September 14, 1994.
Claimants' Supplemental Memorandum concerning Respondents' Motion to Dismiss filed: September 15, 1994.

Field's Supplemental Answer and Counterclaim filed: March 3, 1995.
Field's Motion to File a Counterclaim filed on: April 3, 1995.
Claimants' Memorandum in Opposition to Field's Motion to File a Counterclaim filed: April 7, 1995.

Hamilton's Motion to Dismiss filed: May 9, 1995.
Claimants' Memorandum in Opposition to Hamilton's Motion to Dismiss filed: May 31, 1995.

HEARING INFORMATION

The pre-hearing conferences were held on: January 12, 1995 for One (1) session before a majority of the panel:
March 24, 1995 for One (1) session before One (1) arbitrator.

The hearings were held on: May 11, 1995 for Two (2) sessions;
May 12, 1995 for Two (2) sessions;
July 17, 1995 for Two (2) sessions; and
July 18, 1995 for Two (2) sessions.

The hearing location was Southfield, Michigan.

CASE SUMMARY

Claimants John and Donna Yankoviz invested in a real estate limited partnership. Respondents Robert Lorente and Dana Field were registered representatives associated with Respondent Korn Womack Stern & Associates. Claimants alleged that Respondent Hamilton Investments acquired KWS in October of 1989.

Claimants alleged that, in the summer of 1987, they indicated to Respondent Lorente that they were looking for safe, conservative investments. Claimants alleged that they advised Lorente of their lack of investment experience and the fact they were reposing their trust in him. Claimants alleged that Respondents Lorente, Field, and KWS prepared a financial plan and subsequently assisted the Claimants in executing the plan. Claimants maintained that one of the recommendations within the financial plan indicated to the Claimants that they invest in a real estate income producing limited partnership. Claimants alleged that, as a consequence of these recommendations, they invested in the Concord Advantage II Limited Partnership.

During mid-1990, Claimants alleged that they begin receiving notices from the Concord Advantage II Limited Partnership that the underlying properties in the limited partnership were in serious financial trouble and at risk for major defaults. Claimants alleged that they will sustain a loss on their investment of approximately \$100,000.00 of the funds invested in 1987. Claimants alleged that the financial plan indicated a recommendation to place 10% of the Claimants' portfolio into a real estate income producing limited partnership. Claimants alleged that Lorente and KWS deviated from the financial plan by placing almost 48% of Claimants' portfolio into the limited partnership. Moreover, Claimants alleged that they failed to meet the suitability qualifications for the offering.

Respondents Hamilton Investments, KWS, Lorente, and Field denied any liability to the Claimants in their Answers. Respondent Hamilton Investments denied that it was a successor of KWS, or had any involvement in any events associated with this claim. Respondent KWS denied that it was a predecessor of Hamilton Investments or that Respondent Lorente was in KWS's employ. Respondent Lorente denied that he made recommendations or investments for the Claimants during the time period involved in this case. Lorente alleged that he was introduced to the Claimants by Respondent Field and only made recommendations and investments for the Claimants two years after the limited partnership investment in question was made. Respondent Field alleged that although he advised Claimants to invest \$170,000 in a diverse fund of seven investments, Claimants decided to invest

\$151,760 in a single limited partnership. Field alleged that Claimants were experienced investors who understood and acknowledged the "risk vs. return" concept and wanted to maximize their returns.

RELIEF REQUESTED

Claimants requested an award in the amount of \$100,000.00 in damages plus interest, costs and attorney fees against respondents.

Respondents Lorente, Field, Hamilton Investments, and KWS requested that the claims asserted against them be denied in the entirety and that they be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondents KWS and Field did not file executed submission agreements, but as an NASD member firm and associated person when the transactions giving rise to the claim arose, they are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

On January 16, 1995, after all parties waived oral argument, the Panel determined that the Motion to Dismiss was granted only as to any specific Sec. 10(b) or Rule 10b-5 claims made by Claimants. All other relief requested in the Respondents' Motion to Dismiss was denied.

On May 10, 1995, the Panel granted Field's Motion to File a Counterclaim. On May 11, 1995, the Claimants' were granted time to respond.

On July 17, 1995, the Panel heard argument on Hamilton's Motion to Dismiss. After consideration of the arguments, the Panel denied Hamilton's motion.

On August 8, 1995, the Panel requested that the parties provide the Panel with additional post-hearing information. By letter dated August 14, 1995, the information was provided by the parties.

During the course of the proceedings, Claimants dismissed and withdrew the complaints against Respondents Lorente, Field, and KWS. By a Stipulated Order executed by the parties and forwarded to the NASD on September 16, 1995, the Complaint and Counterclaim as to Claimants John W. Yankoviz and Donna Yankoviz, and Respondents Dana Field and Robert G. Lorente were dismissed with prejudice and without costs and attorneys' fees.

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 pleading, 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. Respondent Hamilton Investments, Inc. is liable and shall pay to Claimants John and Donna Yankoviz the sum of \$15,000.00 in compensatory damages, plus interest at the statutory rate as provided under Michigan law, accruing from the date of this award to and including the date the award is satisfied;
2. Pursuant to the Stipulated Order, the claims and counterclaims as to Claimants John Yankoviz and Donna Yankoviz, and Respondents Dana Field and Robert G. Lorente, including any claims that were, could or should have been brought, are dismissed with prejudice and without costs or attorneys fees to either party;
3. The claims against Respondent Korn, Womack Stern & Associates, Inc. are hereby dismissed with prejudice;
4. The parties shall each bear their own costs, including attorneys' fees, except for those enumerated herein;
5. Any relief not specifically awarded is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$ 500.00. per hearing session and \$300.00. for each pre-hearing conference, if any. There were two (2) pre-hearing sessions x \$ 300.00. = \$ 600.00 in forum fees. There were eight (8) hearing sessions x \$500.00. = \$4,000.00. in forum fees. Combined forum fees equal \$4,600.00. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$150.00 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimants.

Claimants John and Donna Yankoviz are assessed and shall pay to the NASD, the sum of \$1,800.00 in forum fees. Respondent Hamilton Investments, Inc. is assessed and shall pay to the NASD the sum of \$2,300.00 in forum fees.

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

Dated:

October 30, 1995

October 27, 1995

October 30, 1995

For NASD Use Only

Date Award Served on the Parties: November 6, 1995

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