

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Emylie K. and Barbara Masopust

93-00864

Name of Respondents

Multi-Financial Securities Corp.
Kenneth Puckett

REPRESENTATION

For Claimants at the hearing: Steven Samson, Esq., Evanston, Illinois.

For Respondent Kenneth Puckett at the hearing: Michael J. Falconer, Esq., Chicago, Illinois. For Respondent Multi-Financial Securities Corp. (not present at the hearing): David Burlingame, Esq. of McMichael, Burlingame, Multz & Lipton, Denver, Colorado.

CASE INFORMATION

Statement of Claim filed: March 5, 1993. Claimants, Emylie and Barbara Masopust's Submission Agreement signed on: February 2, 1993.

Statement of Answer filed by Respondent, Multi-Financial Securities Corp. on: August 4, 1993. Respondent, Multi-Financial Securities Corp.'s Submission Agreement signed on: August 4, 1993.

Motion To Decline Jurisdiction filed by Respondent, Kenneth Puckett on or about: May 18, 1993.

HEARING INFORMATION

Pre-Hearing Conference: January 28, 1994 for one (1) session with the panel.

Hearing Dates/Sessions: January 19, 1994 for one (1) session;
February 3, 1994 for one (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, Emylie and Barbara Masopust ("claimants") alleged that they are unsophisticated investors and that respondents, Multi-Financial Securities Corporation and Kenneth Puckett ("Puckett") engaged in material misrepresentations, made false statements, and omitted to disclose material information about the following investments: Real Estate Mortgage Trust/Speer Development and Secured Investment II.

Claimants more specifically alleged that Puckett told them that their money was invested in conservative investments in segregated accounts but was, rather, converted by respondents for their own use; that the investments were fully insured, safe and liquid and could be returned to claimants upon demand; and that respondent Multi-Financial properly supervised Puckett. Claimants also alleged that although their money was taken, Puckett continually, actively, and fraudulently concealed from the claimants material facts giving rise to the fraudulent conversion of their money by sending fraudulent statements of account showing their investment was safe and by telling claimants that their investment was safe each time claimants questioned Puckett.

Respondent Multi-Financial Securities Corporation filed a Motion To Dismiss for Lack of Jurisdiction and for Violation of Section 6 of the NASD Code of Arbitration Procedure as their Answer.

In response to the Statement of Claim, respondent Puckett filed a Motion To Decline Jurisdiction pursuant to Section 6 and Section 12(b) of the NASD Code of Arbitration Procedure.

Claimants, in their response to the Motion To Decline Jurisdiction, alleged that claimants are not parties to the Illinois Secretary of State's injunctive action against Puckett.

RELIEF REQUESTED

Claimants requested damages in the amount of \$270,385.24 which includes out-of-pocket losses plus interest at 12%; treble damages in the amount of \$609,000.00; punitive damages; attorney's fees; forum fees and costs. Claimants also requested that the Motion To Decline Jurisdiction be denied.

Respondent Multi-Financial Securities Corporation requested that the matter be dismissed with prejudice.

Respondent Puckett requested that jurisdiction be declined.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing, claimants settled their claims against respondent Multi-Financial Securities Corporation. Multi-Financial Securities Corporation was subsequently withdrawn as a party from the action.

Prior to the hearing, counsel for Kenneth Puckett filed a Motion To Consolidate and counsel for claimant filed a response thereto. The panel denied the motion.

Prior to the hearing, counsel for respondent Kenneth Puckett filed a Motion To Dismiss the claim pursuant to Section 6 of the NASD Code of Arbitration Procedure and counsel for claimant filed a response thereto. The panel denied the motion.

Respondent Kenneth Puckett did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the Code, and having made an appearance through his attorney at the hearing and also having been an associated person of a member firm of the NASD, is bound by the determination of the panel on all issues submitted.

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. The panel hereby finds by clear and convincing evidence that respondent, Kenneth Puckett engaged in fraud and thereby damaged the claimants in the amounts specified below. Therefore, respondent, Kenneth Puckett shall be and hereby is liable for, and shall pay to the claimants, Emylie and Barbara Masopust, an award of Two Hundred Seventy Thousand Three Hundred Eighty Five Dollars and Twenty Four Cents (\$270,385.24) which represents the claimants' out-of-pocket losses and interest;
2. Claimant's request for treble damages is denied;
3. Claimants' request for punitive damages is denied;

4. Claimants' request for attorney's fees is denied;
5. Each of the parties shall bear their own costs and expenses, other than those specifically enumerated for herein.
6. Respondent Kenneth Puckett's Motion To Decline Jurisdiction is denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions X \$750 = \$1500 minus hearing session deposit of \$750 = \$750 plus \$150 for the pre-hearing conference session = net \$900 due.

The NASD shall retain the non-refundable filing fee in the amount of \$200 and the hearing session deposit in the amount of \$750 which was previously deposited with the NASD by the claimants.

The additional forum fees are assessed against respondent Kenneth Puckett in the amount of \$900. Respondent Kenneth Puckett shall also reimburse to the claimants, the nonrefundable filing fee in the amount of \$200 and the hearing session deposit in the amount of \$750 which were previously deposited with the NASD by the claimants.

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

By The Arbitration Panel:

Dated:

<u>2-10-94</u>	<u>s/s</u>	<u>Bernard F. Doyle, Jr., Esq.</u> Bernard F. Doyle, Jr., Esq. Presiding, Public Arbitrator
<u>2-10-94</u>	<u>s/s</u>	<u>John R. Lavery, Esq.</u> John R. Lavery, Esq. Public Arbitrator
<u>2-08-94</u>	<u>s/s</u>	<u>John M. Eberle</u> John M. Eberle Industry Arbitrator

Date Award Served By The NASD: 2-14-94

NASD Disciplinary Referral

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Name of Respondents

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Kenneth Puckett

Disciplinary Referral

After reading the pleadings submitted to the NASD by the parties and hearing the testimony presented by the parties, at the arbitration hearing conducted in Chicago, Illinois on January 19, 1994 and February 3, 1994, the panel of arbitrators made a finding against the respondent Kenneth Puckett. The panel of arbitrators elected to refer the case for disciplinary review by the NASD for any possible NASD rule violations arising out of the panel's findings as set forth in paragraph one (1) of the Award, which the respondent Kenneth Puckett may have engaged in while an associated person of a member firm of the NASD.

By The Arbitrators:

Dated:

2-10-94

s/s **Bernard F. Doyle, Jr., Esq.**
Bernard F. Doyle, Jr., Esq.
Presiding, Public Arbitrator

2-10-94

s/s **John R. Lavery, Esq.**
John R. Lavery, Esq.
Public Arbitrator

2-08-94

s/s **John M. Eberle**
John M. Eberle
Industry Arbitrator