

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James J. and Mary A. Marks

93-01121

Name of Respondents

Keith Dunton
Hamilton Investments, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 23, 1993, Claimants James J. and Mary A. Marks, who appeared Pro Se, alleged that on December 3, 1991 Claimant James J. Marks met with Respondent Keith Dunton, Account Executive at Respondent Hamilton Investments, Inc. whereby he explained that Claimants needed a capital gain for the year 1991 to offset some capital losses, and since Claimant had purchased several corporate bonds from Respondent Keith Dunton which had appreciated in value, thus Claimant James J. Marks requested that Respondents sell and immediately buy back several bonds, at which time, Respondent Keith Dunton indicated that he would implement the request and that there would be no cost as it would be a paper transaction. Claimants further alleged that they confirmed their instructions via letter dated December 4, 1991 and Respondent Keith Dunton acknowledged receipt of said letter. Claimants contended that it was noted to Respondent Keith Dunton and affirmed in their letter of December 4, 1991, that their requests were put in writing in order to avoid any misunderstanding whereby Respondent Keith Dunton never took exception to this request. Claimants further contended that on December 31, 1991 Respondent Keith Dunton sold a Fort Howard Jr. Sub. Deb for \$10,950.00, creating a Capital gain from the original purchase price and subsequently, on January 31, 1992, Respondent Keith Dunton repurchased the bond for \$11,890.00, causing a \$940.00 loss, at which time, Claimants complained to Respondent Hamilton Investments, Inc., who have failed to provide any satisfaction. Claimants asserted that Wisconsin Security law requires that sales persons execute customers orders promptly and must not ignore customer instructions, and considering that verbal instructions were given with followup written instructions, whereby Respondent Hamilton Investments, Inc. never took exception to this request, therefore, Claimants should be compensated by Respondents for their loss.

Respondents Hamilton Investments, Inc. and Keith Dunton, by and through E. William Severson, Vice President - Compliance, maintained that Claimants James J. and Mary A. Marks became clients of Respondent Hamilton Investments, Inc. in February, 1991 with the purchase of a corporate bond whereby Claimant James J. Marks subsequently purchased other bonds during 1991. Respondents further maintained that during a meeting on December 3, 1991, Claimant James J. Marks requested liquidation of some of his securities which had appreciated in value whereby, the purpose of these liquidations was to provide capital gains which could then be used to offset losses on securities personally held by Claimants elsewhere. Respondents contended that Claimant James J. Marks requested that the securities be liquidated and immediately repurchased at "identical prices", at which time, despite Respondents efforts in explaining the market system and the impossibility of simultaneously liquidating and purchasing a security at identical prices, Claimant James J. Marks continued to voice his expectations that the transactions be handled in exactly this manner whereby it was suggested to Claimants that they contact their Tax Consultant with regard to the tax consequences of the repurchase. Respondents further contended that at Claimants insistence they agreed to contact their Corporate Bond Desk to explore other options that would accommodate their request. Respondents asserted that in a follow-up telephone conversation, Claimants were informed that their Bond Department could not suggest viable alternatives for generating taxable gains or losses for them. Respondents further asserted that contact with Claimants continued with the eventual decision to liquidate two of the issues and attempt to re-purchase these bonds in the immediate future at the "best" available prices, at which time, on December 23, 1991, 15,000 face value of a Fort Howard Junior Subordinated Debenture was sold generating a capital gain of \$1,232.50 and subsequently on January 31, 1992, the Fort Howard Debenture was re-purchased at a cost of \$11,890.00. Respondents further alleged that in March, 1992 Claimants requested payment of \$943.06 as reimbursement for the loss they thought they realized in the sale and subsequent re-purchase of the Fort Howard Debenture. Respondents further contended that attempts were made to accommodate Claimants' requests but it was simply not possible to execute Claimants' instructions as presented which fact was made known to them on numerous occasions.

RELIEF REQUESTED

Claimants James J. and Mary A. Marks requested \$940.00 in actual damages together with interest in the amount of \$113.00 and reimbursement of the \$30.00 NASD filing fee.

Respondents Hamilton Investment, Inc. and Keith Dunton requested the claim be dismissed.

AWARD

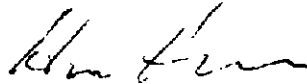
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Herbert Neuer, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitrations signed by the Claimants on March 16, 1993, by the Respondent Hamilton Investment, Inc. on May 17, 1993 and by the Respondent Keith Dunton on May 14, 1993.

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 claim of Claimants James J. and Mary A. Marks against Respondents Hamilton Investments, Inc. and Keith Dunton is dismissed.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants James J. and Mary A. Marks shall be retained by the NASD, Inc. Respondents Hamilton Investments, Inc. and Keith Dunton are jointly and severally liable and shall pay to the Claimants the sum of \$15.00, as partial reimbursement.

AFFIRMATION

I, HERBERT NEUER, ESQ., 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.



Herbert Neuer, Esq.

DATE OF DECISION: August 13, 1993