

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Anthony and Joann Niekrewicz

93-01560

Name of Respondent(s)

Michael P. Ryan
Prime Capital Services, Inc.

REPRESENTATION

For Claimants Anthony and Joann Niekrewicz: David L. Becker, Esq. of the law firm of Kutak Rock, New York, NY.

For Respondents Prime Capital Services, Inc. and Michael P. Ryan: Ted Finkelstein, Esq., in-house counsel at Prime Capital Services, Inc.

CASE INFORMATION

Statement of Claim filed: April 19, 1993.

Claimants' Submission Agreement signed on: April 12, 1993.

Joint Statement of Answer filed by Respondents Prime Capital Services, Inc. and Michael P. Ryan on: June 28, 1993.

Respondent Prime Capital Services, Inc.'s Submission Agreement signed on: June 24, 1993.

Respondent Michael P. Ryan's Submission Agreement signed on: June 24, 1993.

HEARING INFORMATION

Pre-hearing conference: April 11, 1994
Hearing Dates/Sessions: November 18, 1994 / Two Sessions
December 9, 1994 / One Session

Hearing Location: NASD offices located in New York City, NY.

CASE SUMMARY

Claimants alleged that they were unsophisticated investors and advised Mr. Ryan, a registered representative with Prime Capital Services, Inc., that they were relying on his advice and that the money they were investing was intended for their retirement and that they were interested in conservative, secure, income producing investments and were not interested in speculative investments.

Claimants further alleged that despite their express desires, Mr. Ryan's sole recommendations to the Claimants were two tax sheltered limited partnerships. The first being Diversified Historical Investors II, in which the Claimants invested \$3,000.00 in December 1985 and the second, Historical Landmark Realty Growth Fund: The Pennsylvanian, in which the Claimants invested \$30,000.00 in December 1987.

Claimants alleged that Mr. Ryan represented the partnerships as having five year lives at the end of which the Claimants could receive a return of their principal and growth from these investments. The Claimants alleged that contrary to Mr. Ryan's representations they are unable to sell the investments and that there is little chance of getting their money back in the near future.

Claimants alleged that Mr. Ryan made unsuitable investments in light of the Claimants' stated investment objectives and fraudulently misrepresented the nature and risks of these investments. Claimants alleged that Prime Capital Services, Inc. failed to adequately supervise Mr. Ryan and is liable for his wrongful conduct. Claimants further alleged that as a result of the foregoing, Mr. Ryan and Prime Capital Services, Inc. breached the fiduciary duty owed to the Claimants and breached the express and implied contract they had with the Claimants.

Respondents maintained that retirement planning was the sole purpose for which the Claimants consulted with Mr. Ryan and assert that the Claimants sought Mr. Ryan's advice for overall financial advice in tax, investment and retirement

planning.

Respondents denied that the Claimants were unsophisticated investors and alleged that Claimants were engaged in real estate development, held rental property and informed Mr. Ryan that they intended to expand their real estate holdings. Respondents also maintained that Mrs. Niekrewicz stated she had completed a Series 7 course.

Respondents further denied that Claimants had ever informed Mr. Ryan that the money they were investing was of limited amount and was solely intended for retirement purposes. Respondents also denied that Mr. Ryan's sole recommendations to the Claimants were two tax sheltered limited partnerships and alleged Mr. Ryan recommended numerous other investments and that the limited partnerships represented less than 15% of the funds the Claimants invested through Mr. Ryan.

Respondents further denied that they failed to disclose the risks involved with the limited partnerships or that Mr. Ryan represented the limited partnerships as having five year lives and alleged that the Claimants received prospectuses that clearly outlined the speculative nature of the investments which the Claimants represented they had read and understood when they signed the subscription agreement for the first limited partnership.

Respondents maintained that the two year time period between the investments in the limited partnerships gave the Claimant time to understand the consequences of investing in limited partnerships and increased the Claimants' investment knowledge which assisted the Claimants in their decision to buy the second limited partnership in 1987.

Respondents denied that the investments were unsuitable for the Claimants and alleged that the prospectuses for both limited partnerships outlined minimum levels for net worth and gross income required for an investment in the partnership and the Claimants represented that they exceeded both requirements.

Respondents further denied that Mr. Ryan made any misrepresentations concerning the quality and safety of the investments and alleged that the investments have yielded the Claimants \$10,000.00 in tax credits even though the Claimants maintain they have received no return on the investments.

Respondents, for the reasons stated above, denied that they breached their contract with the Claimants, breached any fiduciary duties or that Prime Capital Services, Inc. failed to supervise Mr. Ryan.

Respondents maintained that as a result of Claimants filing this claim the Respondents have suffered a significant loss of income and damage to their business reputation.

The Claimants denied all counterclaims asserted by the Respondents.

RELIEF REQUESTED

Claimants requested rescission of the limited partnerships; or \$33,000.00 in damages representing the money invested in the limited partnerships plus interest at the rate of 9%. Claimant also requested costs incurred in bringing this action and any further relief the panel deemed just and proper. The Claimants further requested a dismissal of Respondents' counterclaim.

Respondents requested that all claims asserted against them be dismissed. The Respondents also requested \$10,000.00 in damages for loss of business plus attorneys' fees and costs incurred in defending this action.

AWARD

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

1. All claims by the Claimants against the Respondents are dismissed in all respects.
2. The Respondents' counterclaim is denied.
3. 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:

1 Pre-hearing conference (\$300.00) + 3 sessions x \$400.00 = \$1,500.00
less Claimant's hearing session deposit (\$400.00) less Claimant's
overpayment of a postponement fee (\$200.00) = \$900.00 less
Respondent's hearing session deposit (\$300.00) less Respondent's
overpayment of a postponement fee of (\$200.00) = net \$400.00 due.

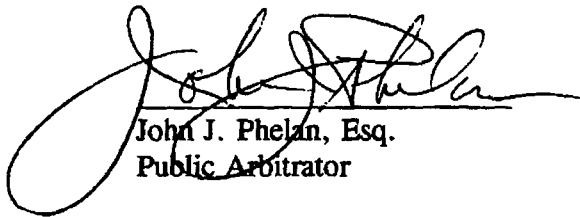
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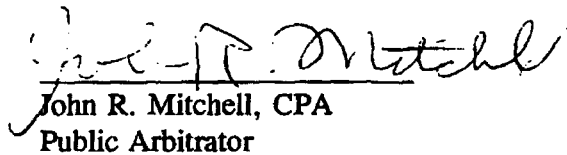
The Claimants be and hereby are liable and shall pay to the NASD the sum of \$150.00 representing forum fees and the Respondents are hereby liable jointly and severally and shall pay to the NASD the sum of \$250.00 representing forum fees.

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

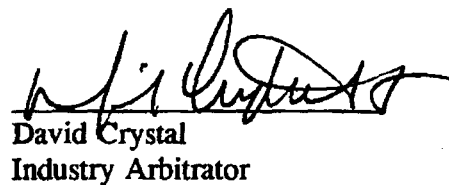
ARBITRATORS' SIGNATURE



John J. Phelan, Esq.
Public Arbitrator



John R. Mitchell, CPA
Public Arbitrator



David Crystal
Industry Arbitrator

Date of Decision: January 31, 1995

STATE OF:

SS:

COUNTY OF:

On this 4 day of Jan, 1994, before me personally appeared John J. Phelan, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Catherine A Nolan

STATE OF:

NEW YORK

CATHERINE A. NOLAN
Notary Public, State of New York
No. 60495-001
Qualified in New York County
Commission Expires July 2, 1996

SS:

COUNTY OF:

WESTCHESTER

On this 28 day of January, 199⁵, before me personally appeared John R. Mitchell, CPA known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Jacqueline Kunka

JACQUELINE KUNKA
NOTARY PUBLIC, State of New York
No. 4840499
Qualified in Westchester County
Commission Expires 8/31/95

STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

On this 25 day of JANUARY, 199⁵, before me personally appeared David Crystal known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

James P. Donohue, Jr.

JAMES P. DONOHUE, JR.
Notary Public, State of New York
No. 60-4031101
Qualified in Westchester County
Commission Expires Jan. 21, 1995

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