

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Earl Avery

93-01696

Name of Respondents

Raymond James & Associates, Inc.
Delaware Charter Guarantee & Trust Co.
Robert Wolfson
J.B. Hanauer & Co., Inc.
Neil Cohen

REPRESENTATION

For Claimant, Earl Avery ("Claimant"): Ashirah S. Napthalli, Esq. located in Laurelton, New York.

For Respondent, Raymond James & Associates, Inc.: Kevin A. Carreno, Esq. of Raymond James & Associates, Inc. located in St. Petersburg, Florida.

For Respondents, Robert Wolfson, J.B. Hanauer & Co., Inc., and Neil Cohen: Gregory B. Reilly, Esq. of Lowenstein, Sandler, Kohl, Fisher & Boylan located in Roseland, New Jersey.

Respondent, Delaware Charter Guarantee & Trust Co., a non-member of the National Association of Securities Dealers, Inc., did not voluntarily submit to this arbitration proceeding, and therefore, was not represented.

CASE INFORMATION

Statement of Claim filed: July 13, 1993.

Claimant's Submission Agreement signed on: August 2, 1993.

Statement of Answer filed by Respondent. Raymond James & Associates, Inc. on: October 27, 1993.

Respondent's Submission Agreement signed on: November 10, 1993.

Statement of Answer filed by Respondents, Robert Wolfson, J.B. Hanauer & Co. and Neil Cohen on: September 30, 1993.

Statement of Amended Answer filed by Respondents, Robert Wolfson, J.B. Hanauer & Co. and Neil Cohen on: March 10, 1994.

Respondents' Submission Agreements signed: by Robert Wolfson on August 30, 1993; and by J.B. Hanauer & Co., Inc. and Neil Cohen on August 25, 1993.

HEARING INFORMATION

Hearing Date/Sessions: March 21, 1994 - Two sessions

Hearing Location: National Association of Securities Dealers, Inc. offices located in New York, New York.

CASE SUMMARY

Claimant alleged that on or about July 29, 1991 Respondents Robert Wolfson, J.B. Hanauer & Co., Inc. and Neil Cohen ("Respondents") misrepresented the 1985 Municipal Bond Fund-Tax Exempt Securities Trust-Krupp Limited Partnership as a "no risk" investment with a 100 percent return within five years, provided no withdrawal was made on the original \$15,000 sum invested. Furthermore, Claimant alleged that Respondents misrepresented the Krupp Insured Limited Partnership ("KRIM") in which he invested \$11,800, as an IRA Rollover, and as providing an approximate annual rate of return of eight percent compounded quarterly.

Claimant alleged that he made no withdrawal from the original sum deposited in the Tax Exempt Securities Trust Series, which later was transferred to Krupp Limited Partnership at the urging of Respondent Wolfson. Claimant contended that there was 60 percent loss on the original investment which totalled \$20,705.62 upon the merger of the Berkshire Realty and Krupp Limited Partnership. In addition, Claimant alleged Respondents failed to timely inform the Claimant of the investment's decline, thereby prohibiting him from cutting his losses on this investment. With respect to the KRIM-IRA, Claimant alleged that Respondents failed to inform him of the decline in the annual rate of return from 8 percent to 3.49 percent.

Moreover, Claimant contended that Respondents Raymond James and Delaware Charter Guarantee refused to return and/or to transfer the cash value of

Claimant's IRA to him, or to his designee, upon his written request. Finally, Claimant alleged that Respondents failed to provide him requested documents as to why Delaware Charter Guarantee should be released from any liability regarding Claimant's investments.

Respondents alleged that at no time did they either misrepresent or indicate to the Claimant that the recommended investment was a "no risk" investment, or that either the Krupp Cash Plus III Limited Partnership or KRIM-IRA would generate a 100 percent return for the Claimant within five years. To the contrary, Respondents alleged that they advised the Claimant of both the risks involved and of the illiquidity of the investment. In addition, Respondents contended they provided the Claimant with prospectuses on both companies. Moreover, Respondents alleged that the Claimant made the decision to transfer his funds to the Krupp Cash Plus III Limited Partnership after he was apprised both orally and in writing of the potential risks and advantages of such a transfer. Respondents indicated that on July 29, 1991 the Krupp Cash Plus III Limited Partnership merged with Berkshire Realty Company, Inc. ("BRI"), and that the Claimant requested and received BRI stock certificates which he sold for \$9,294.33 less than a month later.

Respondent Raymond James & Associates alleged that its only involvement in the matter was as a dealer in the secondary market for partnerships. On or about March 12, 1993, Respondent J.B. Hanauer contacted Respondent Raymond James and placed an order to sell Claimant's units in KRIM at \$16.25 per unit. Respondent Raymond James forwarded to the Claimant the paperwork required to be completed by him in order to finalize the sale. However, on April 16, 1993, Respondent J.B. Hanauer advised Respondent Raymond James that the Claimant refused to sign the paperwork and that the sale should be canceled.

RELIEF REQUESTED

Claimant requested an award against the Respondents for the following:

1. The sum of \$38,239.78, representing \$20,705.62 on the Krupp Cash III Limited Partnership and \$17,534.16 on the KRIM-IRA;
2. Treble damages for the loss incurred on the rate of return, filing fees, hearing fees and attorney's fees; and
3. Such other costs, disbursements and relief as the arbitration panel deems just and proper.

Respondents requested that the arbitration panel find in Respondents' favor and award Respondents attorney's fees and expenses incurred concerning the proceeding.

OTHER ISSUES CONSIDERED & DECIDED

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 original remains 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. Claimant's claims are denied in all respects; furthermore, no evidence was presented to show any liability or privity with respect to the claims against Neil Cohen, Raymond James & Associates, Inc., and Delaware Charter Guarantee & Trust Co.
2. Respondent's claims for attorney's fees are denied.
3. Claimant shall pay all forum fees.

FORUM FEES

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

$$2 \text{ sessions} \times \$400 = \$800$$


Forum fees Assessed Against:

1. Claimant, in the amount of \$800 less hearing session deposit of \$380 = net \$420 due; and

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

Concurring Arbitrators' Signatures

Sidney N. Weiss, Esq.
Chairperson
Public Arbitrator


Andrew Cote, Esq.
Panelist
Industry Arbitrator

Barry A. Mahler, Esq.
Panelist
Public Arbitrator

Date of Decision: July 14, 1994

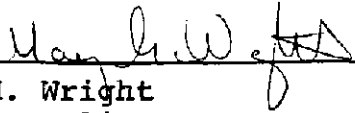
STATE OF:

COUNTY OF: **ss:**

On this day , 1994, before me personally appeared **Sidney N. Weiss, 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.

STATE OF:
CONNECTICUT
COUNTY OF: **ss:**
LITCHFIELD

On this day July 1994, before me personally appeared **Andrew Cote, 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.




Mary M. Wright
Notary Public
My commission expires: 9/30/98

STATE OF:

COUNTY OF: **ss:**

On this day , 1994, before me personally appeared **Barry A. Mahler, 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.

Concurring Arbitrators' Signatures



Sidney N. Weiss, Esq.

Chairperson

Public Arbitrator

Andrew Cote, Esq.

Panelist

Industry Arbitrator

Barry A. Mahler, Esq.

Panelist

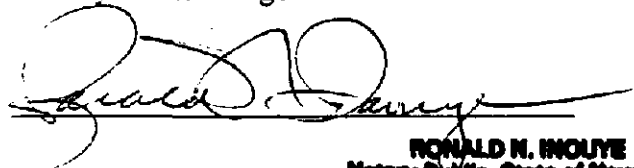
Public Arbitrator

Date of Decision: July 14, 1994

STATE OF: *NEW YORK*

COUNTY OF: *New York*

On this *13th* day *July*, 1994, before me personally appeared **Sidney N. Weiss, 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.



RONALD N. HOUYE
Notary Public, State of New York
No. 60-4960726 Qual. in Westchester Co.
Certificate filed in New York County
Term Expires May 8, 1995

STATE OF:

COUNTY OF: ss:

On this day , 1994, before me personally appeared **Andrew Cote, 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.

STATE OF:


COUNTY OF: ss:

On this day , 1994, before me personally appeared **Barry A. Mahler, 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.

Concurring Arbitrators' Signatures

Sidney N. Weiss, Esq.
Chairperson
Public Arbitrator

Andrew Cote, Esq.
Panelist
Industry Arbitrator



Barry A. Mahler, Esq.
Panelist
Public Arbitrator

Date of Decision: July 14, 1994

STATE OF:

COUNTY OF: ss:

On this day , 1994, before me personally appeared Sidney N. Weiss, 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.

STATE OF:

COUNTY OF: ss:

On this day , 1994, before me personally appeared Andrew Cote, 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.

STATE OF: *NY*

COUNTY OF: *M* ss:

On this *13th* day *July*, 1994, before me personally appeared Barry A. Mahler, 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.

Susan Hemraj

SUSAN HEMRAJ
Notary Public, State of New York
No. 24-4881474
Qualified in Kings County
Commission Expires May 18, 1995