

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Marvin E. Hayes and Mary E. Hayes,  
husband and wife,

No.93-02270

ORDER/AWARD

Claimants

v.

Stuart James Investment Bankers, a  
Colorado Corporation;  
Paradise Valley Securities, an Arizona  
corporation;  
First American Biltmore, an Arizona  
corporation;  
Franklin-Lord, Inc., an Arizona  
corporation;  
Richard C. Whelan and Jane Doe Whelan,  
husband and wife;  
Brett L. Bouchy and Jane Doe Bouchy,  
husband and wife; and  
Valarie Ellen Kessler and John Doe Kessler,  
husband and wife.

Respondents.

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**REPRESENTATION OF PARTIES**

**Claimants** Marvin E. Hayes and Mary E. Hayes were represented by Osmond Burton, Esq.

**Respondent** Stuart James was not represented at the hearing and never made an appearance by Response or otherwise.

**Respondent** Paradise Valley Securities, Inc., was represented at the hearing by Stephen T. Meadow, Esq., John L. Stoss, Esq. And Michael Jacobson.

**Respondent** First American Biltmore was not represented at the hearing.

**Respondents** Franklin Lord, Inc., Richard and Jane Doe Whelan and Brett and Jane Doe Bouchy were not represented at the hearing but filed a response and a Motion to Dismiss through their counsel which at the time of the hearing was Thomas H. Fehn, Esq.

### **CASE INFORMATION**

Petitioners Marvin E. Hayes and Mary E. Hayes (the "Hayes") filed their Arbitration Claim on June 3, 1993. Claimants' Submission Agreement was signed on June 23, 1993.

Respondents Franklin Lord, Inc., Richard Whelan, Jane Doe Whelan, Brett L. Bouchy and Jane Doe Bouchy filed an undated Answer.

Respondent First American Biltmore filed its Answer on September 7, 1993.

Respondent Valarie Ellen Kessler filed her Answer on August 27, 1993, and signed her Submission Agreement on August 26, 1993.

Respondent Paradise Valley Securities, Inc. Filed its Answer on August 26, 1993, and signed its submission Agreement on August 26, 1993.

### **HEARING INFORMATION**

A hearing was held on November 11, 1997, in which the undersigned arbitrators participated.

Respondents Franklin Lord, Inc., Richard and Jane Doe Whelan and Brett and Jane Doe Bouchy moved, on October 9, 1997, to dismiss with prejudice the Petition for Arbitration for Petitioner's failure to respond to discovery requests. That Motion to Dismiss was joined by Respondent Paradise Valley Securities, Inc., on October 15, 1997. All moving Respondents requested an award of costs and Respondent Paradise Valley Securities, Inc. Also requested an award of its attorneys' fees.

The arbitration was completed in one session on November 11, 1997, in less than four hours.

### **CASE SUMMARY**

The Hayes' claim alleges that Respondents sold to and/or managed certain securities on their behalf without inquiring of the Hayes' financial condition, income, expenses, retirement goals or any aspect of their expectations as customers and investors. The Hayes' are also alleging that the securities purchased from and/or managed by Respondents were unsuitable investments for them and that the Respondents committed fraud in the sale of securities and in conducting transactions in their account through false representations. The Hayes' also allege that Respondents Stuart James Investment Bankers, Paradise Valley Securities, Inc., First American Biltmore, and Franklin Lord, Inc., failed to exercise management supervision over their accounts. The Hayes' allege that the conduct of all Respondents resulted in direct financial losses totaling \$30,966.65.

### **RELIEF REQUESTED**

The Hayes', in their Arbitration Petition, request compensatory damages in the amount of \$30,966.65 plus loss of income opportunity on their investments, punitive damages, costs, and reasonable attorneys' fees.

Respondents Franklin Lord, Inc., Richard and Jane Doe Whelan, Brett and Jane Doe Bouchy, in their Motion to Dismiss, and Paradise Valley Securities, Inc., in its joinder therein, request dismissal of the Petition for Arbitration with prejudice and costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made on behalf of the Petitioners, the undersigned arbitrators determine that all Respondents have been properly served with the Arbitration Petition pursuant to Sections 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code").

During the pendency of the hearing Petitioners moved to dismiss Respondent Paradise Valley Securities, Inc., indicating that a settlement had been reached between those two parties in the amount of \$1,000 payable by Paradise Valley Securities, Inc., to the Hayes'. The Hayes' also moved to dismiss all claims against Respondent Valerie Ellen Kessler and John Doe Kessler. A non-attorney representative of counsel representing Franklin Lord, Inc., Richard and Jane Doe Whelan and Brett and Jane Doe Bouchy called and spoke to the Arbitration Chair, Michael W. Sillyman, requesting that the hearing be postponed because counsel for said Respondents was unaware that the hearing would proceed once they filed their Motion to Dismiss.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **ORDER AND 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:

The telephonic Motion to Postpone the hearing made by a representative of counsel for Respondents Franklin Lord, Inc., Richard and Jane Doe Whelan, and Brett and Jane Doe Bouchy is denied.

The Motion to Dismiss filed by Respondents Franklin Lord, Inc., Richard and Jane Doe Whelan, and Brett and Jane Doe Bouchy, and joined in by Respondent Paradise Valley Securities, Inc., is denied.

The Motion to Dismiss Respondent Valerie Ellen Kessler and John Doe Kessler is granted with prejudice.

The Motion to Dismiss Respondent Paradise Valley Securities, Inc., is granted with prejudice.

#### **IT IS HEREBY ORDERED:**

1. Petitioners Marvin and Mary Hayes shall be awarded damages of \$30,996.65 against Respondents Stuart James Investment Bankers, Richard and Jane Doe Whelan and Brett and Jane Doe Bouchy plus interest at 10% per annum from the date of this Award.

2. No damages shall be awarded against Respondents Franklin Lord, Inc., or First American Biltmore for lack of sufficient evidence having been presented regarding their participation in the transactions alleged in the Arbitration Petition.

3. Each party shall bear his, hers or its own costs and expenses, including attorneys' fees, associated with this arbitration since no evidence was presented to the Arbitrators by which they could determine an appropriate award of attorneys' fees.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session. There was one session x \$400 = \$400 in forum fees. Pursuant to Section 10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$120 and shall **assess** as forum fees the hearing session deposit in the amount of \$400 against Respondent

Franklin Lord, Inc. The hearing session deposit was previously deposited with NASD Regulation, Inc., Office of Dispute Resolution by the Claimant.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

Michael W. Sillyman  
Michael W. Sillyman, Chair  
Public Arbitrator

/s/

January 5, 1998

Keith Folkman  
Keith Folkman  
Public Arbitrator

/s/

December 23, 1997

James B. Kaiser  
James B. Kaiser  
Industry Arbitrator

/s/

January 2, 1998