

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Dr. Howard Freedberg, Debra Freedberg, Dr. Julian M. Joffe and Dr. David A. Hoffman

and

93-02427

Name of Respondents

Sussex Financial Group, Inc. and Marvin Heiman

REPRESENTATION OF PARTIES

Dr. Howard Freedberg, Debra Freedberg, Dr. Julian M. Joffe and Dr. David A. Hoffman ("Claimants") were represented at the hearing by Ronald L. Futterman, Esq., and Michael A. Behn, Esq., of Futterman & Howard, Chicago, Illinois.

Respondents Sussex Financial Group, Inc. ("Sussex") and Marvin Heiman ("Heiman") were represented at the hearing by James E. Hanlon, Jr. Esq., and Jeffrey M. Glass, Esq., of Katten Muchin & Zavis, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on June 18, 1993. Amended Statement of Claim was filed on November 16, 1993. Submission Agreements of Claimants were signed on June 14, 1993, by Dr. Howard Freedberg and Debra Freedberg and on June 10, 1994, by Dr. Julian Joffe, and on November 15, 1993, by Dr. David Hoffman.

Joint Statement of Answer was filed by Respondents Sussex and Heiman on August 27, 1993. Joint Answer to the Amended Statement of Claim filed by Sussex and Heiman on January 13, 1994.

HEARING INFORMATION

The hearing was held on March 15, 1994 for two sessions, March 16, 1994, for two sessions, April 21, 1994 for two sessions, and on May 16, 1994, for two sessions in Chicago, Illinois for a total of 8 sessions.

CASE SUMMARY

Claimants alleged that Respondent Sussex and Respondent Heiman, as one of its principals, recommended as a "safe" investment the purchase of unsecured Notes issued by Towers Financial Corporation, which ultimately filed for bankruptcy. Claimants alleged the following violations in their claim: 1. violation of 1933 Securities and Exchange Act; 2. violation of Rule 10(b)(5) of the 1934 Securities and Exchange Act; 3. violation of Illinois Securities laws; 4. common law fraud; 5. breach of trust; 6. negligent misrepresentation; 7. breach of contract; and 8. negligent performance of duties.

Respondents Sussex and Heiman, in their Answer, stated that the unsecured nature of the Towers Notes were fully disclosed to the Claimants, and that Heiman advised the Claimants that the amount of their investment should be limited appropriately. Sussex and Heiman further stated that Heiman never used the word "safe" to describe the Towers Notes. Sussex and Heiman also denied Claimant's allegation that they never received a copy of an applicable offering document. Sussex and Heiman stated that at all times they exercised reasonable care which included conducting reasonable due diligence investigations into the Towers Notes.

Claimants Amended their Claim to include Dr. David A. Hoffman as a Claimant and to add one additional claim for all Claimants for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

Respondents Sussex and Heiman, in their Reply to the Amended Claim, stated that Heiman never made any investment on Dr. Hoffman's behalf without first consulting with him and obtaining his approval. Sussex and Heiman further stated that Hoffman gave his prior approval of the investment in Towers Notes.

RELIEF REQUESTED

Claimants requested approximately \$145,000.00, pre-judgment interest, costs, and punitive damages (including attorney's fees as part of the punitive damages award) in the amount of \$250,000.00:

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, and for its costs and disbursements, including reasonable attorney's fees, and other relief deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Sussex and Heiman did not file with the N.A.S.D. a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the N.A.S.D. Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration 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 N.A.S.D.

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. This award shall apply to each Claimant and each of their respective qualified retirement plans that made some of the investments alleged to have been wrongful;
2. The panel has determined not to award claimant any damages. Therefore, the Claimants' Statement of Claim is denied and dismissed in its entirety;
3. Each of the parties shall bear their own costs and expenses incurred other than those specifically enumerated below under Forum Fees.

FORUM FEES

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimants.

Forum fees are calculated at the rate of \$750.00 per hearing session (8 hearing sessions).

Total amount of Forum Fees due to the N.A.S.D.: $\$750 \times 8 = \6000 minus hearing session deposit of $\$750 =$ net $\$5250$ due. The panel has ordered that additional forum fees be assessed against Claimants, jointly and severally, in the amount of $\$2250$ and against Respondents Sussex and Heiman, jointly and severally, in the amount of $\$3000$.

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

By The Arbitration Panel:

Dated:

John K. Notz, Jr., Esq. s/s
John K. Notz, Jr., Esq.
Presiding, Public Arbitrator

7-21-94

Gregory D. Bruno, Esq. s/s
Gregory D. Bruno, Esq.
Public Arbitrator

7-21-94

Edward V. Quinn s/s
Edward V. Quinn
Industry Arbitrator

7-22-94

Date Award Served By The NASD: 7-22-94