

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Sidney and Carol Holtzman

93-02793

Name of Respondent(s)

H. David Milgrim
Joseph P. St. Thomas

REPRESENTATION

Claimants, Sidney and Carol Holtzman ("the Holtzmans") were represented by Arnold Steinberg, Esq. of the law office of Arnold Steinberg, P.A., Boca Raton, Florida.

Respondents, H. David Milgrim ("Milgrim") and Joseph P. St. Thomas ("St. Thomas") were represented by Ronald Shindler, Esq. of Fowler White Burnett Hurley Banick & Stickroot, Miami, Florida.

CASE INFORMATION

Statement of Claim filed: July 19, 1993. Claimants' Submission Agreement signed on: May 25, 1993.

Statement of Answer filed by Respondents on: January 8, 1994. Respondents' Submission Agreements signed on: November 30, 1993 by Milgrim and on October 28, 1993 by St. Thomas.

HEARING INFORMATION

On July 8, 1994, and August 3, 4, and 5, 1994 hearings lasting seven (7) sessions were conducted in Ft. Lauderdale, Florida.

CASE SUMMARY

This case was brought by the Claimants to redress wrongs allegedly committed in their purchase of Prospect Street High Income Portfolio, Inc., Ostrander Fixed Income Trust - High Income Energy Reserve Fund, and Polaris Aircraft Income Fund III. At the Hearing they also Moved to Conform the Pleadings to the Evidence, and asked that losses from their investments in PLM Equipment Growth Fund and DBL Real Estate Associates II be considered by the Panel.

The Claimants alleged causes of action, in the Statement of Claim, sounding in Fraud, Breach of Fiduciary Duty, Negligence, and Various rules violations, such as NYSE Rule 405 (the "Know your Customer" Rule) and Article III, Sections 1 and 2 of the NASD Rules of Fair Practice (the "Suitability Rule").

Respondents denied all allegations of wrongdoing and alleged that Sidney Holtzman, a former stockbroker, was primarily responsible for making the investment decisions for Claimants. Respondents further alleged that Claimants' investment objective was growth and to maximize income, not preservation of capital. Respondents also alleged that Claimants were experienced investors whose investment experience was not restricted to conservative or blue chip stocks and bonds. Claimants received a prospectus prior to the purchase of each investment which advised them concerning the nature of the investments they were making, as well as the associated risks.

Respondents alleged that St. Thomas was Claimants' broker until December 1988 and that Milgrim became their broker in January 1989. Respondents further alleged that the Statement of Claim did not distinguish between Respondents and that the losses sustained as a result of transactions while Respondent Milgrim was a stockbroker were less than \$5,000.00. Respondents further argued that the claim was nothing more than an attempt to try to capitalize on negative publicity concerning limited partnerships.

Respondents asserted affirmative defenses including: Section 15 of the NASD Code of Arbitration Procedure; statute of limitations; failure to mitigate damages; failure to act with reasonable diligence; ratification; waiver; estoppel; laches; and, lack of proximate cause.

RELIEF REQUESTED

Losses pleaded by the Claimants included \$7,605.00 for Prospect Street as of 3/13/90, \$3,945.60 losses incurred due to the investment in Ostrander, \$25,000.00 for losses due to the investment in Polaris, \$7,500.00 for losses

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incurred in the PLM investment, and \$10,00.00 for losses caused by the investment in DBL Real Estate Associates II. Thus, the total sought by the Claimants in this case is \$54,050.00 plus interest.

Respondents requested dismissal of the claim and a determination by the arbitrators that this is a frivolous case pursuant to Section 57.105 of the Florida Statutes. Respondents Milgrim further requested an order from the arbitrators directing the NASD to delete reference to the Holtzman claim from his record inasmuch as this claim does not involve a claim against him for losses in excess of \$5,000.00 and he has no prior complaint history.

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(s) remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Milgrim and St. Thomas are found not liable and, therefore, the claims against them are hereby dismissed.
2. Claimants' request for attorney's fees is denied.
3. Respondents' request for attorney's fees is denied.
4. The NASD will notify the Central Registration Depository that the Claim against Respondent, Milgrim did not exceed \$5,000.00.

OTHER COSTS

None

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FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of \$2,800.00 (7 sessions x \$400.00 per session).

1. Claimants are hereby assessed \$1,400.00 for which the NASD shall retain the \$400.00 previously paid by Claimants in partial satisfaction thereof, leaving a balance due the NASD of \$1,000.00.

2. Respondents, Milgrim and St. Thomas are hereby assessed \$1,400.00, jointly and severally, payable to the NASD.

3. The NASD shall retain the \$120.00 nonrefundable filing fee previously paid by Claimants.

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

Concurring Arbitrators' Signatures

Name: /s/

Allen J. Kaplan, Esq.

Public/Industry

Public/Chairman

/s/
Phillip E. Norman

Industry

/s/
Manny Levine

Public

Date of Decision: 8-26-94