

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Michael D. & Mary C. Meyers

93-03868

Name of Respondents

Brian Stevenson  
Tom Kelsey

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 24, 1993, Claimants Michael D. and Mary C. Meyers, who appeared Pro Se, alleged that they purchased 15 units of Amfac/JMB Hawaii Inc. limited partnership ("JMB Hawaii") through Respondents Brian Stevenson ("Stevenson") and Tom Kelsey ("Kelsey"), after Respondents recommended to them that they sell their interest in Marion Labs, Inc. and Tandem Computers, Inc. Claimants further alleged that Respondents never explained to them the risks involved with their investment in JMB Hawaii. Claimants contended that Respondents never gave them any literature which explained the risks involved with their investment in JMB Hawaii. Claimants further contended that Respondent Stevenson told them that they could recover their principal at any time during their investment in JMB Hawaii. Claimants alleged that Respondents misrepresented the duration of the investment in JMB Hawaii. Claimants further alleged that before they purchased their interest in JMB Hawaii they told Respondents that they were only interested in safe investments. As a result of the above, Claimants contended that they have suffered damages for which the Respondents should be held liable.

Respondents Tom Kelsey and Brian Stevenson, through their counsel Christopher D. Cavuoti, Esq., of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York, maintained they were never cautioned by Claimants that they only wanted to invest in safe, conservative investments. Respondents further

maintained that Claimants' clearly stated investment objectives were growth and income, and their portfolio's value was over \$100,000.00. Respondents denied they ever recommended to Claimants that they sell their interest in Marion Labs, Inc. and Tandem Computers, Inc. Respondents contended that their recommendation to invest in JMB Hawaii came about in an effort to provide additional diversification to Claimants' portfolio. Respondents further contended that they discussed with Claimants the characteristics, benefits and risks associated with an investment in JMB Hawaii before they made this investment. Respondents maintained that they provided the Claimants with a copy of the prospectus and a sales brochure for JMB Hawaii before they made this investment. Respondents further maintained that they discussed with Claimants the lack of liquidity associated with this investment. Respondents denied that they ever conveyed to Claimants that the investment could be resold at \$1,000.00 per unit. Respondents contended that Claimants were familiar with the prospectus before they made their investment in JMB Hawaii. Respondents further contended that Claimants have already received \$2,900.00 in distributions from their investment in JMB Hawaii. Respondents maintained that their recommendation was compatible with Claimants' stated investment objective and was made in good faith. As a result of the above, Respondents contended that they should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimants Michael D. & Mary C. Meyers requested up to \$10,000.00 in actual damages.

Respondents Tom Kelsey and Brian Stevenson requested that the Claimants' Statement of Claim be dismissed in its entirety, and that costs be assessed against Claimants.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Jerome B. Haddox, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on September 20, 1993 and by the Respondents on November 23, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Tom Kelsey and Brian Stevenson are jointly and severally liable and shall pay to Claimants Michael D. and Mary C. Meyers \$6,750.00 in actual damages.
2. The parties shall bear their respective costs, including attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents Tom Kelsey and Brian Stevenson are jointly and severally liable and shall pay to Claimants Michael D. and Mary C. Meyers \$150.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **JEROME B. HADDOX, ESQ.**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
Signature of Arbitrator

**DATE OF DECISION:** August 9, 1994