

## NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

David and Susan Miroballi

and

94-00041

Name of Respondent

Hamilton Investments, Inc.  
Andrew Martin  
Principal Financial Securities, Inc.

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### **REPRESENTATION OF PARTIES**

David and Susan Miroballi ("**Claimants**") were represented by Steve Senderowitz, Esq., Schwartz Cooper Greenberger & Krauss, Chicago, Illinois.

Hamilton Investments, Inc. ("**Respondent Hamilton**") Andrew Martin ("**Respondent Martin**") and Principal Financial Securities, Inc. ("**Respondent Principal**") were represented by Stephen P. Bedell, Esq., Gardner, Carton & Douglas, Chicago, Illinois.

### **CASE INFORMATION**

The Statement of Claim was filed on or about January 4, 1994. First Amended Complaint was filed on or about September 27, 1994. Submission Agreement of Claimant David and Susan Miroballi was signed on December 9, 1993.

Statement of Answer was filed by Respondent Hamilton Investments, Inc. and Respondent Andrew Martin on or about April 26, 1994. Submission Agreement of Respondent Hamilton Investments, Inc. was signed on March 22, 1994 by James McGhee. Submission Agreement of Respondent Andrew Martin was signed on March 21, 1994.

Amended Answer to Claimants' First Amended Complaint Respondent was filed by Respondents Hamilton Investments, Inc., Andrew Martin and Principal Financial Securities, Inc. on or about April 28, 1995. Submission Agreement of Respondent Principal Financial Securities, Inc. was signed on October 21, 1994 by Stephen P. Bedell.

### **HEARING INFORMATION**

The hearing was held on Monday, June 12, 1995 for two (2) sessions, Tuesday, June 13, 1995 for two (2) sessions, Monday, July 31, 1995 for two (2) sessions, Tuesday, August 1, 1995 for two (2) sessions and Monday, August 21, 1995 for two (2) sessions in Chicago, Illinois for a total of ten (10) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondent Martin:

- ▶ during telephone and in-person conversations with David Miroballi, assured David Miroballi that he would protect the money received in the settlement for injuries sustained in an auto accident and invest it prudently in a program designed to provide a good return and preservation of capital; and
- ▶ contrary to the representations, Martin engaged in on a high risk strategy of investing, making huge transactions in speculative high tech stocks, wrote calls on other stocks and invested substantial funds in mutual funds all of which generated high commissions and fees to Respondents.

Specifically, Claimants alleged that the securities recommended by Respondents were unsuitable and that the actions of Respondents constituted violations of the Illinois and Federal Securities laws, negligence, fraud, misrepresentation, breach of fiduciary duty, and that Hamilton Investments failed to supervise Martin.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the initial transaction in the account were made properly and pursuant to the instructions of David Miroballi. Respondents also asserted numerous affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested an award in their favor and against Respondents jointly and severally in the amount of \$381,151.79 plus interest and costs. Claimants also requested an award of punitive damages against Respondents jointly and severally.

Respondents requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

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

By stipulation between the parties the claims asserted against Principal Financial Securities, Inc. were dismissed.

The parties have agreed that a handwritten, signed Award may be entered. 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Hamilton Investments, Inc. and Andrew Martin shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of **One hundred seventy eight thousand two hundred thirty four dollars (\$178,234)**.
2. No punitive damages are awarded herein.
3. Each party shall bear its own cost, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were ten (10) sessions x \$750 = \$7,500 in forum fees. Pursuant to §43(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 §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$200 and shall **refund** the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimants David and Susan Miroballi.

Respondents Hamilton Investments, Inc. and Andrew Martin shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$7,500 as forum fees.

The NASD shall retain postponement fees in the total amount of \$1,750 previously deposited with the NASD by the Respondents. **Fees are payable to the National Association of Securities Dealers, Inc.**

Concurring Arbitrator's Signature:

Dated:

/s/ Arthur Medow, Esq.

September 7, 1995

Arthur Medow, Esq.  
Public Arbitrator, Presiding Chair

/s/ Willis E. Brown, Esq.

September 26, 1995

Willis E. Brown, Esq.  
Public Arbitrator

/s/ Richard P. Allen

September 8, 1995

Richard P. Allen  
Industry Arbitrator