

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

Kenneth and Lillian Lee

Case No. 94-00160

**Name of Respondents**

Brokers Investment Corporation  
Michael Grossman

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**REPRESENTATION**

For Claimant, Kenneth and Lillian Lee (the "Lees"): Brian J. Sheen of Investment Loss Recovery Services, Inc. of Boca Raton, Florida.

For Respondent, Brokers Investment Corporation ("BIC"): pro se (see "Other Issues").

For Respondent, Michael Grossman ("Grossman"): Michael R. Matthias, Esq. of Matthias & Berg, Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed: January 14, 1994. Claimant's Submission Agreement signed: January 7, 1994.

Respondent, Grossman's, Statement of Answer filed: May 9, 1994. Respondent's Submission Agreement signed: May 6, 1994.

Respondent, BIC, did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code.

**HEARING INFORMATION**

On February 28, 1995, in Fort Lauderdale, Florida, hearings lasting two sessions were conducted.

### **CASE SUMMARY**

Claimants alleged that they are a retired couple in their 80's and are extremely conservative investors who had objectives of preservation of their capital, safety and income. Respondents through misrepresentations induced the Claimants to invest in unsuitable investments of limited partnership interests in Gateway Partners, Trident Equipment Fund Ltd and Sovereign Equipment Fund. The investment in above securities has caused the Claimant great financial harm.

Respondents denied all allegations of wrongdoing and alleged that Claimants purchased limited partnership units pursuant to confidential private placement memorandum which fully, completely and accurately disclosed all aspects of the investments made by Claimants. Claimants represented to Respondents that they were accredited and sophisticated investors, with substantial net worth and were qualified to make the subject investments and if necessary, able to withstand the loss of their investments.

### **RELIEF REQUESTED**

Claimants requested judgement against Michael Grossman and Brokers Investment Corporation jointly, and severally, as follows:

1. For rescissionary and/or other damages to Claimants of \$12, 500.00 invested in Gateway Partners, as a result of the unsuitable investment made, plus interest on the \$12, 500.00 at 12 % for each year since having made the investment.
2. For rescissinary and/or damages to Claimants of \$12,500.00 invested in Trident Equipment Fund, plus interest on the \$12,500.00 at 12% for each year since having made the investment.
3. For rescissionary and/or damages to Claimants of \$12,500.00 invested in Sovereign Equipment Fund, plus interest on the \$12,500.00 at 12 % for each year since having made the investment.
4. On the Claim for fraud, breach of fiduciary duty, and the failure to supervise for the unsuitable investments made, an amount of \$50,000.00 in punitive damages for the duress, and losses, suffered.
5. For all of Claimant's costs, expenses, expert witness fees, and disbursements, including reasonable attorney's fees, and arbitration representative fees of Investment Loss Recovery Services, Inc.
6. For such other relief as the arbitration panel deems just, and proper.

Respondents requested that Claimants take nothing by virtue of their Claim herein and the matter be dismissed.

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

1. Respondent, BIC, failed to submit an executed Submission Agreement, a Statement of Answer, or to appear at the hearing. This Panel finds that it has jurisdiction pursuant to Section 12 of the NASD Code of Arbitration Procedure because BIC was an NASD member firm at the time this controversy arose.

2. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain of file with the NASD.

### **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:

Respondents, BIC and Grossman, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$37,617.00.

Claimants' requests for attorney's fees, costs, expenses and punitive damages are denied.

### **OTHER COSTS**

Other than as provided below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### **FORUM FEES**

Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,000.00 (two hearing sessions x \$500.00 per session).

Respondents, BIC and Grossman are hereby assessed \$1,000.00 jointly and severally, \$500.00 of which shall be paid directly to the Claimants, and \$500.00 of which shall be paid to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimants.

Respondents shall reimburse the Claimants \$150.00 for non-refundable filing fee.

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The NASD shall retain the session deposit of \$500.00 paid by Claimants.

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

Concurring Arbitrators' Signatures

/s/  
Arthur J. Leibell, Esq., P.A.

Public

/s/  
Richard M. Kowalske

Industry

/s/  
Michael Lau

Public

Date of Decision: April 27, 1995