

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

David I. Milner

94-00957

Name of Respondent

Hanifen, Imhoff Inc.

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**CASE SUMMARY**

In a claim filed with the NASD, Inc. on March 11, 1994, Claimant David I. Milner, who appeared Pro Se, alleged that on March 11, 1994, alleged that Respondent Hanifen, Imhoff, Inc. misplaced a portion of the funds in his IRA account. Claimant further alleged that on April 10, 1985 he purchased through his broker at E.F. Hutton, Inc., a real estate limited partnership called Insured Income Properties, 1985, wherein quarterly payments from this partnership were made into Claimant's IRA account by Franchise Finance Corporation (FFCA), which served as the transfer agent for this partnership. Claimant contended that in 1986 he transferred his IRA account to the Respondent. Claimant further contended that from September 30, 1986 until September 30, 1990 distributions were received by Respondent. Claimant alleged that on September 30, 1990 a new custodian was established by Respondent to receive the distributed funds, Moore and Schley, and that in the Fall of 1990 he requested that his IRA funds be transferred to Fidelity Investments, and at this time he discovered that the \$4,835.80 that had been distributed from FFCA to his IRA account, only \$2,162.00 was transferred to Fidelity Investments leaving \$2,673.00 of the IRA funds that were not transferred. Claimant David I. Milner contended that by October, 1991 the discrepancy was reduced to \$2,027.00 for which the Respondent should be held liable.

Respondent Hanifen, Imhoff, Inc., through their in-house counsel, Richard T. Huebner, Esq., maintained that it has traced each of the checks sent to Hanifen, Imhoff, Inc. and cashed by Hanifen, Imhoff, Inc. and the canceled checks from Insured Income Properties 1985 to establish the fact that all funds received by Hanifen, Imhoff, Inc. for the Claimant were in fact deposited in accounts for Claimant's benefit, and that it has committed no wrongdoing; therefore, it should not be held liable.

**RELIEF REQUESTED**

Claimant David I. Milner requested \$2,027.00 in actual damages.

Respondent Hanifen, Imhoff, Inc. requested that the claims of the Claimant be dismissed.

**AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James Cronin, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 7, 1994 and by the Respondent on May 6, 1994.

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. The claims of the Claimant David I. Milner against Respondent Hanifen, Imhoff, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant David I. Milner, shall be retained by the NASD, Inc.

**AFFIRMATION**

I, JAMES CRONIN, ESQ., do hereby affirm upon my oath as 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: December 6, 1994