

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

Name of Claimant(s)

Robert D. and Mary G. Waller, Trustee

v.

NASD Arbitration  
No. 94-01275

Name of Respondent(s)

Titan Value Equities Group and Erny Malakoff

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**REPRESENTATION**

For Claimants: Richard Sacks, Investors Recovery Services,  
Novato, California

For Respondents: Donald Wagner, Wagner & Lickman,  
Irvine, California

**CASE INFORMATION**

Statement of Claim filed: March 29, 1994

Claimants' Submission Agreement signed: November 15, 1993

Joint Statement of Answer filed by Respondents: August 23, 1994

Respondent Titan Value Equities Group's Submission Agreement signed: August 19, 1994

Respondent Erny Malakoff's Submission Agreement signed: August 11, 1994

**HEARING INFORMATION**

Hearing Dates/Sessions: April 20, 1995 (two sessions)  
April 21, 1995 (two sessions)

Hearing Location: San Francisco, California

### **CASE SUMMARY**

Claimant alleged that Respondents gave improper advice concerning an investment in Towers Financial Corporation Recourse Promissory Notes. Specifically, Claimants alleged a violation of Article III, Section 2 of the NASD Rules of Fair Practice with respect to investor suitability. Claimants further alleged breach of fiduciary duty, negligence and misrepresentation.

Respondents maintain that the Towers Financial Corporation Recourse Promissory Notes were thoroughly investigated and that the investment was suitable and appropriate for investors with the experience and wealth of the Claimants. Respondents further maintain that as brokers, they are not guarantors of such investments.

### **RELIEF REQUESTED**

Claimants sought \$25,000 to compensate for their loss. In addition, Claimants requested interest to replace lost income and reasonable costs associated with this matter.

Respondents requested that the claims of the Claimants be rejected in their entirety and that Respondents be awarded their costs and expenses.

### **OTHER ISSUES CONSIDERED AND 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 remains on 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:

1. Respondent Titan Value Equities Group is liable for and shall pay Claimants the sum of Thirty Thousand Dollars (\$30,000.00).
2. Respondent Erny Malakoff and Titan Value Equities Group are jointly and severally liable for and shall pay Claimants the sum of One Thousand Two Hundred Fifty Dollars (\$1,250.00).
3. Claimants shall return all of the Tower Financial Corporation Recourse Promissory Notes to Respondent Titan Value Equities Group, in full recession of the Claimants' investment.
4. The parties shall each bear their respective costs, including attorney's fees.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall refund the \$400.00 hearing session deposit previously submitted by Claimants. Respondent Titan Value Equities Group shall pay the NASD \$1,600.00 for forum fees assessed as follows:

Four hearing sessions @ \$400/session      -      \$ 1,600.00

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

### ARBITRATORS

Name ..... Public / Industry

Brian F. Kram

Public Arbitrator

Robert A. White

Public Arbitrator

Lawrence N. Kummer

Industry Arbitrator

### Concurring Arbitrators' Signatures

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Brian F. Kram

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*Robert A. White*  
Robert A. White

\_\_\_\_\_  
Lawrence N. Kummer

Date Served: 5-17-95