

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mildred Askins

94-01619

Name of Respondents

Emanuel & Company
Neal Scott

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 2, 1994, Claimant Mildred Askins, who appeared Pro Se, alleged that Respondents Emanuel & Company ("Emanuel") and Neal Scott ("Scott") made misrepresentations and recommended an unsuitable investment. Claimant further alleged that Respondent Scott has been the representative for her IRA investment for 6 years and has misled her throughout, beginning with the recommendation to invest in the Southmark Price Plus Limited Partnership ("Prime Plus"). Claimant contended that Respondent Scott never informed her of major changes in the conditions of her investment, including the bankruptcy of the Prime Plus parent company. Claimant further contended that Respondent Scott has not responded to scores of phone calls over the years from the Claimant who had questions about her investment and who desired to sell off her units of Prime Plus. Claimant alleged that Respondent Scott made misrepresentations about the rate of return on her investment and failed to inform her about the possibility of having her shares repurchased. As a result of the above, Claimant contended that she has suffered damages for which the Respondents should be held liable.

Respondent Neal Scott, who appeared Pro Se, maintained that Claimant had full disclosure of all risks regarding her investment and received a complete due diligence file on Prime Plus prior to such investment. Respondent Scott denied the existence of any alleged acts or implications contained in the claim. Respondent Scott further maintained that he inherited Claimant's account from another broker at Respondent Emanuel & Company. Respondent Scott contended that Respondent Emanuel did exhaustive due diligence on the product in question and made it available for representation to clients. Respondent Scott further contended he did not make a misrepresentation to Claimant, and that there had been a takeover of the investment by

McNeil Real Estate Management which has resulted in a turnaround and better performance. Respondent Scott maintained that the bitterness displayed toward the investment by Claimant is being projected towards him. Respondent contended that he should not be held responsible for an investment that did not work properly, especially one that was deemed appropriate as an IRA investment and one in which at least quarterly updates were sent to the investor. As a result of the above, Respondent maintained that he should not be held liable in this matter.

Respondent Emanuel & Company did not file a Statement of Answer.

RELIEF REQUESTED

Claimant Mildred Askins requested that her purchase of Southmark Prime Plus Limited Partnership be rescinded, plus \$10,000.00 in actual damages.

Respondent Neal Scott requested that the claims of the Claimant be dismissed, and that his expenses, costs and attorney's fees be reimbursed by the Claimant.

Respondent Emanuel & Company did not file a Statement of Answer.

OTHER ISSUES CONSIDERED & DECIDED

The Arbitrator reviewed and considered Respondent Neal Scott's request for a hearing. The Arbitrator denied this request.

In accordance with Section 13 of the NASD Code of Arbitration Procedure, Respondent Emanuel & Company was served by regular and certified mail and given an opportunity to respond, which it failed to do. Service was effected as evidenced by return receipt cards on file with the NASD, Inc.

Pursuant to the By-laws of the NASD, Inc. the Arbitrator determined that Respondent Emanuel & Company had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

AWARD


Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Arnold Limsky, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration and signed by the Claimant on April 29, 1994, by Respondent Neal Scott on June 17, 1994, but not signed by Respondent Emanuel & Company as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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 Emanuel & Company and Neal Scott are jointly and severally liable and shall pay to Claimant Mildred Askins \$8,000.00 in actual damages.
2. Respondents Emanuel & Company and Neal Scott are jointly and severally liable and shall pay to Claimant Mildred Askins simple interest at 10% per annum from December 1, 1994 until the date of payment of the award.
3. Claimant Mildred Askins is to relinquish her interest in 1,000 shares of Southmark Prime Plus Limited Partnership to Respondents Emanuel & Company and Neal Scott upon full payment of the award.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Mildred Askins shall be retained by the NASD, Inc. Respondents Emanuel & Company and Neal Scott are jointly and severally liable and shall pay \$150.00 to the Claimant as reimbursement of the filing fee.

AFFIRMATION

I, **ARNOLD LIMSKY**, 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

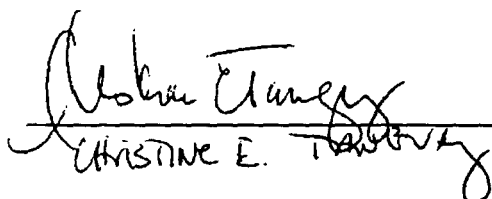
DATE OF DECISION: December 23, 1994

STATE OF: Florida

SS:

COUNTY OF: Palm Beach

On this 12th day of December, 1994, before me personally appeared Arnold Limsky to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



CHRISTINE E. TANGUAY

