

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John J. Grabner, Jr.
Evelyn Grabner
John J. Grabner, III
Dorris E. Wolfe
Peter Solobay

95-00846

Name of Respondents

Rose Securities Corporation
Rose Capital Markets Corporation
Allan Bird
Bill Goldsmith
Jules Silver
Mitchell Witt

REPRESENTATION

Claimants John J. Grabner, Jr., Evelyn Grabner, John J. Grabner, III ("Grabners"), Dorris E. Wolfe ("Wolfe") and Peter Solobay ("Solobay") were represented by J. Scott Kramer, Esq. of the law firm of Duane, Morris & Heckscher, Philadelphia, PA.

Respondents Rose Securities Corporation ("Rose Securities"), Rose Capital Markets Corporation ("RCMC"), Allan S. Bird ("Bird") and Jules C. Silver ("Silver") were represented by James L. Sanders, Esq. of the law firm of Sheppard, Mullin, Richter & Hampton, Los Angeles, CA.

Respondent William A. Goldsmith ("Goldsmith") was represented by Edward S. Gelfand, Esq. of the law firm of Friedman & Phillips, Los Angeles, CA.

Respondent Mitchell A. Witt ("Witt") was represented by Peter H. Benzian, Esq. of the law firm of Latham & Watkins, San Diego, CA.

CASE INFORMATION

A Joint Statement of Claim by John J. Grabner, Jr., Evelyn Grabner, John J. Grabner, III, Dorris E. Wolfe and Peter Solobay (collectively "Claimants") was filed on February 17, 1995. Joint Submission Agreement signed by Claimants John J. Grabner, Jr., Evelyn G. Grabner, and John J. Grabner, III was filed on February 15, 1995.

Wolfe's Submission Agreement was signed on February 15, 1995
Solobay's Submission Agreement was signed on February 15, 1995

A Joint Statement of Answer was filed by Rose Securities, RCMC, Bird and Silver on May 4, 1995
Rose Securities Corporation's Submission Agreement was signed on May 9, 1995
RCMC's Submission Agreement was signed on May 9, 1995
Bird's Submission Agreement was signed on May 9, 1995
Silver's Submission Agreement was signed on May 12, 1995

A Statement of Answer was filed by Goldsmith on May 30, 1995
Goldsmith's Submission Agreement was signed on May 30, 1995

A Statement of Answer was filed by Witt on October 26, 1995
Witt's Submission Agreement was signed on October 18, 1995

HEARING INFORMATION

Hearing Dates/Sessions:

November 7, 1995 - two sessions
November 8, 1995 - two sessions
November 9, 1995 - two sessions
January 16, 1996 - two sessions
January 17, 1996 - two sessions
January 18, 1996 - two sessions

Hearing Location: NASD District Office, Philadelphia, PA

CASE SUMMARY

Claimants alleged, among other things, that they were unsophisticated investors with virtually no previous investment experience. Claimants alleged that Respondents collectively pursued a general scheme to solicit existing holders of certificates of deposits ("CDs") to engage in unwitting speculation in a much riskier instrument, namely Towers Financial Corporation Healthcare Receivables Promissory Notes ("Towers Financial Notes"). Claimants alleged that Towers Financial Notes were marketed by the Respondents as a private placement and were touted as CD equivalents. Claimants alleged that they did not meet the criteria set forth by Towers Financial Corporation ("Towers") to be an accredited investor i.e. net worth of more than \$1,000,000 and that Respondents solicited Claimants to invest although Respondents knew that Claimants did not meet this criteria. Claimants alleged that they were victims of fraudulent misconduct of Respondents in misrepresenting the securities as promissory notes and being advised that the return that they would receive was superior to a CD. Claimants alleged that, based on Respondents

misrepresentations, they rolled over their maturing "Jumbo" CDs into Tower Financial Notes. Claimants alleged that they lost their entire life's savings as a result of the fraud and misrepresentations of Respondents. Claimants alleged that Respondents fraudulent conduct arises out of their fraudulent marketing and sale of the Tower Financial Notes in which Respondents placed their desire to obtain large commissions over the investment needs and objectives of their clients. Claimants alleged that Respondents violated the RICO statutes and as well as sold unregistered securities to Claimants. Claimants maintained that they were residents of the Commonwealth of Pennsylvania and that Respondents solicited, advertised and sold securities that were not registered for sale in Pennsylvania. Claimants alleged that Respondents failed to conduct the needed due diligence, made material omissions as well as misrepresentations, that they conducted fraud, that they breached their fiduciary duty owed to Claimants and that they violated both state and federal securities laws.

Respondents denied each and every allegation of wrongdoing alleged by Claimants. Respondents maintained that Rose Securities was one of many broker dealers who sold Tower Financial Notes. Respondents maintained that the Tower Financial Notes were sold pursuant to the exemption of registration contained in Regulation D of the Securities Act of 1933. Respondents maintained that they were completely unaware of Towers' fraud. Respondents maintained that as soon as they were notified of the SEC action against Tower, they discontinued their sales of the Tower Financial Notes. Respondents maintained that they were the conduit for the information that Tower prepared for distribution to investors. Respondents maintained that they were not aware of any false statements of any nature contained in the information they received from Tower. Respondents maintained that, based on the information they received from Tower, Tower Financial Notes were a suitable investment for the Claimants. Respondents maintained that the subscription documents disclosed the risks related to investing in Tower Financial Notes and that they should only be purchased by accredited investors. Claimants filled out the subscription agreements and indicated that they qualified as accredited investors. Respondents maintained that they are entitled to rely on Claimants' statements concerning their net worth. Goldsmith specifically maintained that he was a salary employee who did not receive any benefit for the sales of Tower Financial Notes made to Claimants. Respondents maintained that the due diligence that they undertook before the sale of Tower Financial Notes to their customers were sufficient and that they reasonably relied on representations by professionals prior to recommending the Tower Financial Notes to their clients. Respondents maintained that Towers' fraud was one of the largest financial frauds in America's corporate history and not only damaged the Claimants but also the Respondents. Respondents maintained, among others affirmative

defenses, the following: claims barred by applicable statutes of limitation; lack of knowledge; laches, estoppel and waiver; mitigation of damages; comparative fault; justification; Rule 508 of the Securities Act of 1933; not owner or sellers as required by Section 12(1) and 12(2) of the Securities Act of 1933; and, no control person liability.

RELIEF REQUESTED

Claimants, in their pleading, requested damages as permitted under civil RICO statute, including treble damages, attorneys' fees, interest and costs; rescission damages in the following amounts:

Grabner \$265,000; Wolfe \$203,000; and Solobay \$25,000
Claimants also requested damages from Respondents for their improper solicitations and sale of unregistered securities to unaccredited investors such as Claimants; damages from Respondents for placing Claimants' life savings in unsuitable investments; damages for Respondents' fraud, misrepresentation and breach of fiduciary duty; punitive damages for Respondents willful violation of federal and Pennsylvania securities laws as well as common law compensatory damages, attorney's fees, interest and costs.

Respondents requested an award in their favor and that all claims' by Claimants be dismissed in their entirety.

OTHER ISSUES CONSIDERED & 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 originals remain on file with the NASD.

That the Panel was advised that Respondent Bill Goldsmith passed away on January 25, 1996, therefore, the Panel has decided that if and when the estate has been established, the executor or executrix should be substituted for Bill Goldsmith.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That all claims against RCMC and Jules Silver are denied in their entirety.

2. That Respondents Rose Securities, Allan Bird, Bill Goldsmith and/or his estate, and Mitchell Witt are jointly and severally liable to Claimants John J. Grabner, Jr. and Evelyn Grabner and shall pay to them the sum of \$200,000 plus pre judgment interest in the amount of \$36,000 for a total award of \$236,000.
3. That Respondents Rose Securities, Allan Bird, Bill Goldsmith and/or his estate, and Mitchell Witt are jointly and severally liable to Claimant Dorris E. Wolfe and shall pay to Mr. Wolfe the sum of \$203,000 plus pre judgment interest in the amount of \$36,540 for a total award of \$239,540.
4. That Respondents Rose Securities, Allan Bird, Bill Goldsmith and/or his estate, and Mitchell Witt are jointly and severally liable to Claimant Peter Solobay and shall pay to Mr. Solobay the sum of \$20,000; plus pre judgment interest in the amount of \$3,600 for a total award of \$23,600.
5. All claims of Claimant John J. Grabner, III are denied in their entirety.
6. Claimants' claims for RICO and punitive damages are denied in their entirety.
7. That the parties shall bear their own costs and attorneys' fees except as forum fees are specifically assessed below.
8. Any claims not specifically addressed herein are denied in their entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

12 hearing sessions X \$1,000 = \$12,000

Forum Fees Assessed Against: Respondents Rose Securities, Allan Bird, Bill Goldsmith and/or his estate, and Mitchell Witt jointly and severally.

Respondents Rose Securities, Allan Bird, Bill Goldsmith and/or his estate, and Mitchell Witt are jointly and severally liable for forum fees and shall pay \$11,000 in forum fees to the NASD, Inc. and shall reimburse to Claimants their hearing session deposit of \$1,000 previously deposited.

Grabner Award
Case No. 95-00846
Page 6

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

Date

April 26, 1996

Concurring Arbitrators' Signatures

James A. Jennings
James A. Jennings, Esq., Chairperson
Public Arbitrator

Alfred E. Garfinkel
Public Arbitrator

Robert Ira Rabinowitz, Esq.
Industry Arbitrator

Date Award Served by the NASD:

April 30, 1996

Grabner Award
Case No. 95-00846
Page 6

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Inc.

Date

Concurring Arbitrators' Signatures

4/24/96

James A. Jennings, Esq., Chairperson
Public Arbitrator

Alfred E. Garrinkel
Public Arbitrator

Robert Ira Rabinowitz, Esq.
Industry Arbitrator

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Grabner Award
Case No. 95-00846
Page 6

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Concurring Arbitrators' Signatures

James A. Jennings, Esq., Chairperson
Public Arbitrator

Alfred E. Garfinkel
Public Arbitrator

4/26/96

Robert Ira Rabinowitz
Robert Ira Rabinowitz, Esq.
Industry Arbitrator

Date Award Served by the NASD:

April 30, 1996