

NASD REGULATION AWARD

970117.0

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Robert H. Donohoe

95-04840

Name of Respondents

Sunpoint Securities Inc.
Robert E. Hawkins

REPRESENTATION

Claimant Robert H. Donohoe ("Claimant") was represented by Andrew Fulton, IV, Esq., of the law firm of Cohen Chernay Norris Weinberger & Harris, North Palm Beach, FL.

Respondent Sunpoint Securities, Inc. ("Sunpoint") was represented by Frederick C. Summers, III, Esq., Dallas, TX.

Respondent Robert E. Hawkins ("Hawkins") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on October 13, 1995.
Claimant's Uniform Submission Agreement was signed on September 8, 1995.

Sunpoint's Statement of Answer was filed on January 2, 1996.
Sunpoint's First Amended Statement of Answer was filed on May 16, 1996.
Sunpoint's Uniform Submission Agreement was signed on December 8, 1995.

Hawkins' Statement of Answer was filed on May 6, 1996.
Hawkins' Uniform Submission Agreement was signed on July 17, 1996.

HEARING INFORMATION

Hearing Date/Sessions: December 9, 1996/two sessions

Hearing Location: NASD, Inc.
Washington, D.C.

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CASE SUMMARY

Claimant alleged, among other things, that Hawkins and Sunpoint (collectively "Respondents") used high pressure sales tactics to induce Claimant to purchase interests in a limited partnership known as Continental Income Fund ("CIF"). Claimant alleged that the investment was unsuitable for Claimant and the sales tactics using material misrepresentations amounted to fraud. Claimant alleged that Respondents failed to use adequate due diligence to research their recommendations. Claimant alleged that he had limited investment experience and relied upon the experience of Respondents. Claimant alleged that Sunpoint negligently supervised Hawkins in the management of Claimant's account. Claimant alleged Respondents violated Article III, Section 2 and Article III, Section 1 of the NASD Rules of Fair Practice. In addition, Claimant alleged that given Claimant's age, stage of life and financial condition, Claimant's investment objectives were security with limited risk. Claimant alleged Respondents breached their fiduciary duty to Claimant and that Claimant incurred damages as a result of Respondents' activities.

Sunpoint denied all allegations of wrongdoing asserted by Claimant. Sunpoint maintained, among other things, that it had complied with all suitability requirements under applicable NASD rules and securities laws. Sunpoint maintained that it had complied with all due diligence requirements under applicable securities laws. Sunpoint maintained that Claimant was provided, prior to his investment, a private placement memorandum which fully and accurately disclosed the material facts alleged to have been misrepresented or omitted. Sunpoint maintained that it had neither made material misrepresentations nor did Sunpoint omit any material fact. Sunpoint maintained that, in any event, all claims made by Claimant were barred by the applicable state and federal statutes of limitations.

Hawkins denied all allegations of wrong doing as asserted by Claimant. Hawkins maintained, among other things, that he was first contacted by Claimant as the result of a referral from a former client who had invested in CFI. Hawkins maintained that Claimant's friend had provided information on the investment including projected returns illustrated in the sales literature and prospectus. Hawkins maintained that he went over the prospectus with Claimant and expressed his astonishment that CFI was permitted to print a guaranteed 12% return per year and a personal guarantee by the general partners in the program. Hawkins maintained that he had visited the property involved in the limited partnership and that visit coupled with a review of the due diligence package made Hawkins believe that the program was financially sound. Hawkins denied that any material misrepresentations were made to Claimant and that Claimant was provided sufficient materials and information to make an informed decision.

RELIEF REQUESTED

Claimant requested damages in the amount of \$50,000.00; as well as punitive damages.

Respondent Sunpoint Securities, Inc. requested that Claimant take nothing by reason of his Statement of Claim, and that it be awarded attorneys' fees, costs, and further relief as the arbitrators may consider proper.

Hawkins requested that Claimant's claim be dismissed.

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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.

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. That Respondents Sunpoint Securities Inc. and Robert E. Hawkins are jointly and severally liable and shall pay to Claimant the sum of \$41,710.00 plus five percent (5%) simple interest per annum from October 13, 1995 until the award is paid.
2. That Claimant's request for punitive damages is denied in its entirety.
3. That each party shall bear his/its own costs and expenses, including attorneys' fees, with the exception of forum fees as specified below.

That any and all relief not specifically addressed herein is denied.

FORUM FEES

2 hearing sessions x \$500.00 = \$1,000.00

Forum Fees are assessed equally between Claimant and Respondents Sunpoint Securities Inc. and Robert E. Hawkins. Claimant is assessed forum fees in the amount of \$500.00, however, Claimant is entitled to offset this amount with his hearing session deposited of \$500.00 previously deposited so that no additional fees are due from Claimant. Respondents Sunpoint Securities, Inc. and Robert E. Hawkins are jointly and severally assessed forum fees in the amount of \$500.00.

Forum Fees shall be paid to the National Association of Securities Dealers Regulation, Inc.

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Date Award Signed

1/13/97

Concurring Arbitrators Signatures

Robert E. McLaughlin, Esq.

Robert E. McLaughlin, Esq., Chairperson
Public Arbitrator

Leonard E. Benade, Panelist
Public Arbitrator

Louis Nebel, Panelist
Industry Arbitrator

Date Award Served by the NASD Regulation, Inc.

January 21, 1997

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Date Award Signed

Concurring Arbitrators Signatures

Jan. 13, 1997

Robert E. McLaughlin, Esq., Chairperson
Public Arbitrator

Leonard E. Benade

Leonard E. Benade, Panelist
Public Arbitrator

Louis Nebel, Panelist
Industry Arbitrator

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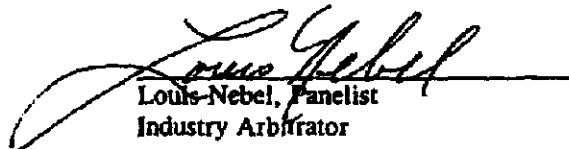
Date Award Signed

Concurring Arbitrators Signatures

Robert E. McLaughlin, Esq., Chairperson
Public Arbitrator

Leonard E. Benade, Panelist
Public Arbitrator

1/18/97


Louis Nebel, Panelist
Industry Arbitrator

Date Award Served by the NASD Regulation, Inc. January 21, 1997