

961114

11/96

## AWARD

NASD Regulation, Inc. Office of Dispute Resolution

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Securities Dealers' Inc.

In the Matter of the Arbitration Between

Name of Claimant

1996

Douglas A. Lapins and Virginia H. Lapins

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and

95-05000

Name of Respondent

\*Titan Value Equities Group, Inc.  
Richard W. Rogers  
Susan Rogers

## REPRESENTATION OF PARTIES

Douglas A. Lapins and Virginia H. Lapins ("Claimants") were represented by James J. Sullivan, Esq., San Francisco, California.

Titan Value Equities Group, Inc. ("Respondent Titan"), Richard W. Rogers ("Respondent") and Susan Rogers ("Respondent") were represented by Brett Marshall Godfrey, Esq. and Richard A. Nervig, Esq., Godfrey & Associates, Denver, Colorado.

## CASE INFORMATION

The Statement of Claim was filed on or about October 23, 1995. Submission Agreement of Claimants Douglas A. Lapins and Virginia H. Lapins was signed on August 21, 1995.

Statement of Answer was filed by Respondents Titan Value Equities Group, Inc., Richard W. Rogers and Respondent Susan Rogers on or about January 12, 1996.

## HEARING MATION

A pre-hearing conference was held on August 5, 1996 for one (1) session, August 7, 1996 for one (1) session, and August 19, 1996 for one (1) session with Edmund Epstein, Esq., presiding.

The hearing was held on August 20, 1996 for one (1) session, October 30, 1996 for one (1) session, October 31, 1996 for two (2) sessions and November 1, 1996 for three (3) sessions in Denver, Colorado for a total of three (3) pre-hearing and six (6) hearing sessions.

### **CASE SUMMARY**

Claimants alleged that Respondents made misrepresentations; were negligent and breached their fiduciary duty to them in connection with the purchase of Towers Financial Corporation Note ("Towers Note") and various other securities, including but not limited to the following:

Atel Equipment Leasing  
Bethel Equipment Leasing  
Icon Equipment Leasing  
IEA Equipment Leasing  
Textainer Equipment Leasing  
Typical Tax Credit Program  
Wells Real Estate  
Windsor REIT

Claimants specifically alleged that Respondents represented that the Towers Note, which involved the purchase of certain medical accounts receivables and the subsequent collection of those funds owed, were subject to certain safeguards and conditions. It was also alleged that Respondents represented that the Towers Note was safe, suitable for the Claimants, secured by specified assets, and that Towers management had an excellent track record. With respect to the other securities at issue, Claimants alleged that Respondents made misrepresentations regarding the safety and income generation of the investments in those securities.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically denied that any registration requirements which may apply or which may have applied to the issuers of the notes or other instruments actually involved in the transactions referenced in the Demand for Arbitration pertain in any way to them. Respondents also denied making any false statements to the Claimants in connection with the transactions in question. Finally, Respondents denied that their actions constituted a violation of the NASD Rules of Fair Practice.

### **RELIEF REQUESTED**

Claimants requested rescission of the Towers Note and other securities; interest from the date of investment; costs; and such other and further relief as the panel deemed just and equitable. Claimants also requested an award of punitive and exemplary damages sufficient to deter similar conduct in the future.

Respondents requested that the claims asserted against them be denied in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents Titan Value Equities Group, Inc., Richard W. Rogers and Respondent Susan Rogers did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim and offered testimony at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

### **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:

Respondents Titan Value Equities Group, Inc., Richard W. Rogers and Respondent Susan Rogers shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of two hundred sixty thousand dollars (\$260,000) as compensatory damages. Upon receipt of the sum stated herein, Claimants are to immediately transfer ownership of all securities at issue in this matter to Respondent Titan Value Equities Group, Inc.

2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of January 1, 1993 to and inclusive of the date this award is paid in full.
3. No punitive damages are awarded herein.
4. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were three (3) pre-hearing x \$300 and six (6) hearing sessions x \$750 = \$5,400 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

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Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimants Douglas A. Lapins and Virginia H. Lapins. Respondents Titan Value Equities Group, Inc., Richard W. Rogers and Respondent Susan Rogers shall be and hereby are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$5,400 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain the postponement fee in the amount of \$750 previously deposited by the Respondents. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Edmund Epstein, Esq.

November 6, 1996

Edmund Epstein, Esq.

Public Arbitrator, Presiding Chair

/s/ Charles S. Chapman

November 5, 1996

Charles S. Chapman

Public Arbitrator

/s/ Otto K. Hilbert, II, Esq.

November 6, 1996

Otto K. Hilbert, II, Esq.

Industry Arbitrator