

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph J. and Joseph P. Colosimo
Joseph and Michael Colosimo
Joseph Colosimo and Anne Marie Laktash
Joseph J. Colosimo

96-00173

Name of Respondents

Edward D. Jones & Co.
Roy W. Kern

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 12, 1996, Claimant Joseph J. Colosimo, Joseph J. and Joseph P. Colosimo, Joseph and Michael Colosimo, Joseph Colosimo and Anne Marie Laktash, ("Claimants"), through their representative and counsel, James D. Keeney, Esq., Namack, Clark & Keeney, of Sarasota, FL, alleged that Respondents Edward D. Jones & Co. ("Jones") and Roy W. Kern ("Kern") gave them unsuitable investment advice by misrepresenting the nature of these investments, from which they suffered significant losses. Claimant Joseph J. Colosimo further alleged he informed Kern of his limited investment experience, his aversion to risk, and his need for a regular and reliable income without erosion or diminution of the principal in the account in question. Claimant contended that he repeatedly stressed to Kern that he did not want to invest funds in any "risky" investments. Claimant further contended that Kern's recommendation that he purchase stock in Alliance North American Government Income Trust Inc.-CL B ("Alliance NAGIT") constituted unsuitable investment advice for Claimant's financial objectives. Claimant asserted that Respondents failed to provide Claimant a copy of the prospectus for any of his investments in Alliance NAGIT prior to the time of trade. Claimant further asserted that Kern omitted the fact that of all the Alliance family group of funds, Alliance NAGIT was among the riskiest and least suitable for Claimants' needs. Claimants alleged that Kern gradually replaced their mortgage backed securities, \$1,000 at a time, with additional shares of Alliance NAGIT. Claimants further alleged that Respondent Jones was negligent in failing to supervise Kern, and should therefore be held liable. Claimants contended that because of the wrongdoing of the Respondents, they have suffered damages for which the Respondents should be held liable.

Respondents Edward D. Jones & Co. and Roy W. Kern, through their representative Heidi R. Youngs, Esq., of Weisenfels & Vaughan, Kansas City, MO, maintained in their Answer that they gave suitable investment advice and that investment in Alliance NAGIT was appropriate for Claimant Joseph P.

Colosimo's stated objectives of investing in high income-producing investments.

Respondents also maintained that Claimants provided with a prospectus for Alliance NAGIT, and further maintained that all risks of the investments were clearly disclosed in the prospectus and in the investment consultations Claimant had with Kern. Respondents contended that Claimants were initially delighted with the performance of Alliance NAGIT, and that except for the first couple of purchases, Claimant's remaining purchases in Alliance NAGIT were unsolicited. Respondent maintained that the drop in value of Alliance NAGIT was due to events beyond the control and foreseeability of the Respondents, and that they should therefore not be held liable for Claimants' losses. Respondents further maintained that they had committed no wrongdoing and requested that the claims against them be dismissed.

RELIEF REQUESTED

Claimant Joseph J. and Joseph P. Colosimo, Joseph and Michael Colosimo, Joseph Colosimo and Anne Marie Laktash, and Joseph J. Colosimo requested \$8,939.13 in actual damages, plus reimbursement of forum fees in the amount of \$150.00, and \$79.47 in additional out-of pocket costs. Claimants requested that a specific finding be made that Respondents have violated Sections 517.211 and 517.301 of the Florida Statutes. Claimants also requested that they be awarded attorney's fees.

Respondents Edward D. Jones & Co. and Roy W. Kern requested that the claims of the Claimants be dismissed, that they be reimbursed for their costs incurred from the proceeding.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Andrew Bolnick, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Joseph P. Colosimo and Joseph J. Colosimo on February 26, 1996, by Michael J. Colosimo and Joseph J. Colosimo on February 27, 1996, by Anne Marie Laktash and Joseph J. Colosimo on February 27, 1996, and by Joseph J. Colosimo on March 4, 1996, and by the Respondent Edward D. Jones & Co. on March 22, 1996, and by the Respondent Roy W. Kern on April 26, 1996.

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 Edward D. Jones & Co. and Roy W. Kern are jointly and severally liable and shall pay to Claimants Joseph J. and Joseph P. Colosimo, Joseph and Michael Colosimo, Joseph Colosimo and Anne Marie Laktash, and Joseph J. Colosimo \$9,209.13 in actual damages, inclusive of interest.

2. Attorney's fees are granted to Claimants; the amount to be determined by a Florida court.
3. All other requests for relief are denied.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents Edward D. Jones & Co. and Roy W. Kern are jointly and severally liable and shall pay to Claimant Joseph J. Colosimo \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **ANDREW BOLNICK**, 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.

A handwritten signature in cursive script, appearing to read "Andrew Bolnick", is written above a horizontal line.

DATE OF DECISION:

July 22, 1996