

AWARD

**NASD Regulation, Inc.,
Office of Dispute Resolution**

In the Matter of the Arbitration Between

Laura Courson
Edward Courson

Claimants

NASD Regulation, Inc.
No. 96-00244

v.

Foothill Securities, Inc.
Donald C. Maxham

Respondents

REPRESENTATION OF PARTIES

Laurel and Edward Courson ("**Claimants**") were represented by Laura Courson, pro se.

Foothill Securities, Inc. and Donald C. Maxham ("**Respondents**") were represented by Antoinette W. Farrell, Esq., Murphy Pearson Bradley & Feeney, San Francisco, California.

CASE INFORMATION

Claimants Statement of Claim was filed on or about January 15, 1996. Claimants Submission Agreements were signed on September 14, 1995.

Respondent Foothill Securities, Inc. and Donald C. Maxham's Joint Statement of Answer was filed on or about March 20, 1996. The Submission Agreement for Foothill Securities, Inc. was signed on April 8, 1997. The Submission Agreement for Donald C. Maxham was signed on April 8, 1997.

HEARING INFORMATION

The hearing was held on February 7 and 21 and March 21 and 27, 1997 in San Francisco, California for a total of 7 sessions.

CASE SUMMARY

Claimants alleged that they first went to Maxham to have their tax returns prepared, not to receive investment advice. Maxham suggested to Claimants they should take the money in their IRA out of the bank and invest in Commonwealth Equity Trust USA (CET) or CET related partnerships. Maxham told Claimants that these securities were as safe as having their money in the bank.

Claimants did not know until April 1993 that their investment in CET had gone down. Claimants were never advised that CET's problems were serious. Claimants did not know because allegedly the Respondents concealed this information from them.

When CET was mentioned in the press, beginning in 1991, Claimants asked Maxham what they should do. Maxham told Claimants not to believe everything they read, CET was in good shape. Nevertheless, Claimants asked to have their shares liquidated and were told by Maxham that they would be placed on a waiting list to liquidate their shares. Respondents could have sold CET shares in the OTC market for Claimants, but chose not to inform Claimants of this. By the time CET filed for bankruptcy its value had dropped to approximately .20/share.

Respondents allegedly misinformed the Claimants at investment inception concerning the safety of CET, and withheld relevant information from Claimants concerning the value of CET until April 1993. Respondent Maxham allegedly failed to tell Claimants the truth concerning the securities in their account at any time. Foothill likewise issued no status report to Claimants or any of their clients concerning CET's true value.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically argued that the arbitration arises over the alleged failure of Donald Maxham, a registered representative with Foothill Securities, Inc., to properly diversify, and make suitable recommendations for, the account of Laura Courson and Edward Courson.

Claimants began placing investments through Mr. Maxham in 1987. Between April 1987 and April 1988, Claimants purchased approximately \$30,000 in Commonwealth Equity Trust, a California-based real estate investment trust, Commonwealth Equity Trust USA (CET-USA) and Commonwealth Growth Fund.

These were the only investments made by Claimants through Foothill and Maxham. All other purchases by Claimants were made by Claimants directly with CET and CET-USA through Dividend Reinvestment. All possible "events or occurrences" out of which this claim could have arisen were made more than six years prior to submission of the instant claim. As such, this claim is clearly not eligible for Arbitration under Rule 10304 (prev. Section 15) of the NASD Code of Arbitration.

Claimants received regular, annual quarterly and periodic reports from CET, CET-USA and Commonwealth Growth Fund so that they could monitor the status of their investment. Respondents are informed and believe that Claimants read these reports and were fully aware of, and fully understood, changes occurring in the CET, CET-USA and Commonwealth Growth Fund investment portfolios and in the manner in which CET, CET-USA and Commonwealth Growth Fund were being managed as they occurred. Claimants knew at all times that Respondents were not offering to provide ongoing financial or investment advice. Claimants made no request for such ongoing advice.

RELIEF REQUESTED

Claimants initially requested an award in the amount of \$36,000 in actual damages, this amount was amended in their closing brief to \$37,889.07 plus interest and costs. Claimants further requested an award of unspecified punitive damages.

Respondents requested that the claims asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Donald C. Maxham filed for Chapter 7 bankruptcy on July 12, 1996. Therefore, all matters are stayed as to Donald C. Maxham.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with 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:

1. Claimants are awarded and Respondent Foothill Securities shall pay to the Claimants the sum of \$10,000.00.
2. Each party to bear their own costs and expenses.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were 7 sessions x \$400 = \$2,800 in forum fees. Pursuant to §43(b) of the NASD Regulation, Inc., Office of Dispute Resolution Code of Arbitration Procedure (the "Code"), 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. Pursuant to § 43(c) of the Code of Arbitration Procedure, Respondent Foothill Securities is assessed all forum fees.

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|---------------------------------|--------------------------|
| Total Fees | |
| 7 Hearing Sessions @ \$400.00 = | \$2,800.00 |
| Total | <u>\$2,800.00</u> |

Pursuant to §43(a)(c) of the Code, NASD Regulation, Inc. shall **retain** the non-refundable filing fee in the amount of \$120 and shall **refund** the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. by the Claimant Laurel and Edward Courson.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by Foothill Securities, Inc.

Fees are payable to the NASD, Regulation, Inc.

Dated:

Lester Friedman, Esq.
Public Arbitrator, Presiding Chair

Arthur L. Hillman, Esq.
Public Arbitrator

John L. Cordova
Industry Arbitrator

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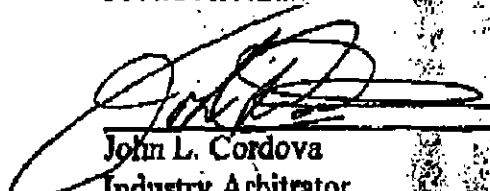
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4-11-97

Date Served: April 14, 1997

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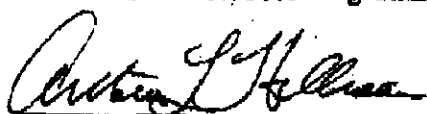
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Public Arbitrator, Presiding Chair



Arthur L. Hillman, Esq.
Public Arbitrator

April 14, 1997

John L. Cordova
Industry Arbitrator

Date Served: April 14, 1997

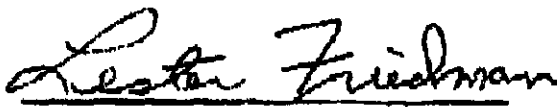
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