

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Michael B. and Evelyn R. Simpson

96-00585

Name of Respondents

Andover Securities, Inc.
Gary Bohling

REPRESENTATION

For Claimants Michael B. Simpson and Evelyn R. Simpson appeared Terrence P. Tormey, Esq.

For Respondent Andover Securities, Inc. appeared David P. Hargrave an attorney in Kansas City, Missouri.

For Respondent Gary Bohling appeared Richard D. Koehler, Jr. President of CKS Securities, Inc. located in Lexington, Kentucky.

CASE INFORMATION

Claimants filed a Statement of Claim on December 6, 1995.

Claimants' executed a Submission Agreement on December 6, 1995.

Respondent Andover Securities, Inc. filed a Statement of Answer on March 12, 1996. Andover executed a Submission Agreement on March 12, 1996.

Respondent Bohling filed a Statement of Answer on March 27, 1996. Bohling executed a Submission Agreement on March 21, 1996.

HEARING INFORMATION

The hearings were held at the Albany Marriott located in Albany, New York on September 30, 1996 and October 1, 1996. Telephonic Pre-Hearing conferences were held on August 23, 1996 and September 20, 1996.

CASE SUMMARY

Claimants alleged that they were approached by respondents and were urged to refinance their home and invest the proceeds in an investment, Tower Financial, which would yield a positive cash flow with more than enough to pay off the mortgage. Claimants further alleged that in less than one year, the investment

Claimants alleged that respondents should have known of the risks in Tower Financial prior to their recommending it and as a result are liable to claimants based on theories of misrepresentation, omission, unsuitability, common law fraud, and breach of fiduciary duty.

In response to the Statement of Claim respondent Andover maintained that the claimants purchased suitable investments through Andover Securities, Inc. Respondent Andover maintained that it made no recommendations, warranties or requests of claimants to take out any mortgage on any real estate owned by claimants let alone claimants' home.

Respondent Andover further maintained that claimants' failed to state the necessary elements of any of the alleged claims and for such reason respondent Andover requests that claimants' claims be dismissed for failure to state any cause of action.

Respondent Bohling denied all allegations of wrongdoing asserted against him. Respondent Bohling maintained that the current values of the investments purchased are not accurately reflected in the statement of claim. Respondent Bohling further maintained that Tower Financial Corp. has no current value but that the purchase thereof was not the result of any misrepresentation, omission, unsuitability, common law fraud or breach of fiduciary duty on the part of this respondent.

Respondent Bohling maintained that respondent fully investigated Towers Financial before recommending it to claimants and, on the information reasonable available to the respondent, recommendation of it as an investment to claimants was proper. Respondent denied that he made any guarantee, representation or warranty to claimants that the proposed investments would yield a positive cash flow with more than enough to pay for their mortgage. Respondent Bohling further denied that claimants suffered compensatory damages by reason of any action committed by this respondent, or that claimants are entitled to any interest, costs or punitive damages from him.

RELIEF REQUESTED

Claimants requested compensatory damages of \$33,310.00 plus interest of \$10,500.00; costs of \$4,000; punitive damages of \$75,000.00. Wherefore, Claimant requests relief be granted, and other relief the panel deems appropriate.

Respondent Andover Securities, Inc. respectfully requests that claimants' claims be dismissed and for respondent Andover Securities, Inc.'s costs herein incurred.

Respondent Bohling requested that the claimants' claim be dismissed.

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. Respondent Andover Securities, Inc. be and hereby is liable and shall pay to the claimants the sum of \$2,600.00;
2. Respondent Bohling be and hereby is liable and shall pay to the claimants the sum of \$23,720.00;
3. All claims for interest be and hereby are denied.

4. All claims for punitive damages be and hereby are denied.

5. All other claims be and hereby are denied.

FORUM FEES

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

2 prehearing sessions x \$300.00 = \$600.00

4 sessions X \$750.00 = \$3,000

Total outstanding forum fees = \$3,600.00

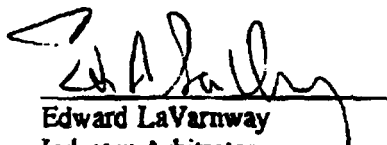
Respondent Andover Securities, Inc. be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$360.00 representing 10% of the forum fees assessed in this matter. Respondent Bohling be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$3,240.00 representing 90% of the forum fees assessed in this matter.

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

Concurring Arbitrators' Signatures
Name


Donald G. Hatt, Esq.
Public Arbitrator - Chairperson

Sheri Lynn Ackerman-Dwyer
Public Arbitrator



Edward LaVarnway
Industry Arbitrator

I, Edward LaVarnway, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above referenced matter.

 12.16.96

Edward LaVarnway

Date of Decision: _____

5. All other claims be and hereby are denied.

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Concurring Arbitrators' Signatures
Name


Donald G. Hatt, Esq.
Public Arbitrator - Chairperson



Sheri Lynn Ackerman-Dwyer
Public Arbitrator

Edward LaVarnway
Industry Arbitrator

I, **Sheri Lynn Ackerman-Dwyer**, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that this is my decision in the above referenced matter.



Sheri Lynn Ackerman-Dwyer

Date of Decision: December 19, 1996

4. All claims for punitive damages be and hereby are denied.

5. All other claims be and hereby are denied.

FORUM FEES

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4 sessions X \$750.00 = \$3,000

Total outstanding forum fees = \$3,600.00

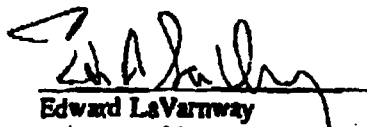
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Donald G. Hatt, Esq.
Public Arbitrator - Chairperson

Sheri Lynn Ackerman-Dwyer
Public Arbitrator


Edward LaVarway
Industry Arbitrator

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Edward LaVarway

Date of Decision: December 19, 1996