

## AWARD

### NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimants

Kalma Koenig  
Robert and Mary Waller

v.

Arbitration No.  
96-00816

Name of Respondents

N.I.F. Securities, Inc.  
James N. Orth

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### REPRESENTATION OF PARTIES

Kalma Koenig, Robert Waller and Mary Waller ("**Claimants**") were represented by Gary E. Gleicher, Esq., Law Offices of Gary E. Gleicher, Beverly Hills, California.

N.I.F. Securities, Inc. and James N. Orth ("**Respondents**") were represented by Stephen J. Riggs, Esq., Brady, Riggs & Ford, Los Angeles, California.

### CASE INFORMATION

Claimants' Statement of Claim was filed on or about February 20, 1996.  
Robert and Mary Waller's Submission Agreement was signed on September 7, 1995.  
Kalma Koenig's Submission Agreement was signed on November 13, 1995.  
Respondents Joint Statement of Answer was filed on or about September 24, 1996.

### HEARING INFORMATION

Pre-hearing conferences were held on:	January 31, 1997	one session;
	February 3, 1997	two sessions;
	May 9, 1997	one session;
	May 13, 1997	one session.

The hearing was held in San Francisco, California on May 14, 1997      two sessions.

### CASE SUMMARY

Claimant alleged that the Respondents, in order to induce the Claimants to participate in the Ved and Stewart Thomas II direct investment trust programs, engaged in misrepresentation, negligence, breach of contract and breach of fiduciary duty. Claimants further allege that the damages suffered by the Claimants are the direct and proximate result of the Respondents conduct at the time of purchase and the Respondents conduct throughout the entire business relationship with the Respondents.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically argued the Statement of Claim was ineligible for arbitration pursuant to the Code of Arbitration Procedure and that the submission of the answer was not to be construed as a waiver of Respondent's rights to contest the jurisdiction of NASD Regulation. Respondents further argued that since they did not sell directly to public investors but instead marketed, presented and distributed investments, including the Trudy Pat investments, solely to broker/dealers who had no direct affiliation with the Respondents. The Respondents also argued that the claim should be barred or in alternative offset by amounts already received by the Claimants from other parties on the same investments.

#### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$84,000 plus interest or rescission. This was interpreted by the panel to be net of damages offset by any prior settlement. Additionally, Claimants requested an unspecified amount of punitive damages.

#### **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 the Respondents N.I.F. Securities, Inc. and James N. Orth failed to submit properly notarized submission agreements. It is the determination of the undersigned arbitrators that the Respondents are required to submit to arbitration pursuant to Rules 10101 and 10301 of the Code of Arbitration Procedure (the "Code") and are bound by the determination of the arbitration panel on all issues submitted. It is further noted that the Respondents answered the claim, appeared and participated at various pre-hearing proceedings but failed to appear at the hearing scheduled for May 14, 1997.

Further, the undersigned arbitrators have also determined that the Respondents have been properly served with the Statement of Claim pursuant to Rule 10314 of the Code and received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents' Motion to Dismiss pursuant to Rules 10301(a), 10305, and 10324 is denied.  
Respondents' Demand for Dismissal of Proceeding Based on Illegal and Improper Representation of Claimants by Richard Sacks, Investors Recovery Service, and Irwin Stein is denied.  
Respondents Demand for Dismissal on the grounds that discovery is incomplete is denied.

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. Kalma Koenig is awarded and Respondents, jointly and severally, shall pay to Ms. Koenig the sum of \$146,894. This amount is offset by the prior settlement payout on the investments at issue in the amount of \$96,000. The net amount of the award to Ms. Koenig is \$50,894, inclusive of interest.
2. Robert and Mary Waller are awarded and Respondents, jointly and severally, shall pay to Robert and Mary Waller the sum of \$28,018.
3. The panel orders rescission of the investments at issue and Kalma Koenig and Robert and Mary Waller are ordered to return the investments to N.I.F. Securities and James Orth.
4. Claimants' request for punitive damages is denied.
5. Each side to bear their own costs and attorney's fees.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were 2 sessions x \$500 plus 4 pre-hearing conferences x \$300 = \$2,200 in total forum fees. Pursuant to Rule 10332(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 Rule 10332(c) of the Code of Arbitration Procedure, all forum fees are assessed against the Respondents jointly and severally bearing.

Total Fees

2 Hearing Sessions @ \$500.00 =	\$1,000.00
4 Pre-Hearing Conf. @ \$300.00 =	\$1,200.00
Total	<u>\$2,200.00</u>

Pursuant to Rule 10332(c) of the Code, NASD Regulation, Inc. shall **retain** the non-refundable filing fee in the amount of \$150 and shall **refund** the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. by the Claimants.

**Fees are payable to the NASD, Regulation, Inc.**

Dated:



Thomas J. Schuchert, Esq.  
Public Arbitrator, Presiding Chair

5/14/97



Richard R. Krivcher  
Public Arbitrator

5-14-97



Barry A. Marnardi  
Industry Arbitrator

5-14-97

Date Served: May 15, 1997