

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Kenneth A. Keeley, and
Kenneth A. Keeley Trust,

Claimants,

v.

No. 96-00822

East-West Capital Corporation,
East-West Group,
East-West Institutional Services, Inc.,
East-West Financial Corporation.
Craig A. Janutol, Jonathan D. Ahlbrand, and
John and Jane Does 1 Through 10,

Respondents.

REPRESENTATION OF PARTIES

Claimants Kenneth A. Keeley and Kenneth A. Keeley Trust (collectively referred to as "Claimants") were represented by Jonathan Kord Lagemann, Esq. of Law Offices of Jonathan Kord Lagemann located in New York, New York and David H. Jarvis, Esq. of Tate, Lazarini & Beall, PLC located in Memphis, Tennessee.

Respondents East-West Capital Corporation, East-West Institutional Services, Inc., Jonathan D. Ahlbrand, and Craig A. Janutol (collectively referred to as "Respondents") were represented by Reuben M. Waterman, Esq. of Troy, Michigan.

As further discussed in Other Issues Considered and Decided, NASD Regulation, Inc. Office of Dispute Resolution did not receive a voluntary submission to arbitration from East-West Group and East-West Financial Corporation, named Respondents in this action. These Respondents are not members of the NASD, or persons associated with members of the NASD, and are thus not compelled by the Rules of the NASD to arbitrate disputes in this forum. These Respondents did not appear in this matter.

CASE INFORMATION

The Statement of Claim was filed on or about February 26, 1996.

Claimants' Submission Agreement was signed on April 18, 1996.

The Joint Statement of Answer was filed on or about August 26, 1996.

Respondents did not file executed NASD Submission Agreements.

Claimants' Post-Hearing Submission was filed on or about June 10, 1998.

HEARING INFORMATION

The hearing was held on April 2, 1998 for one (1) session and May 26, 1998 for one (1) session. The April 2nd hearing was held by phone. The May 6th hearing was held in Southfield, Michigan.

CASE SUMMARY

This case involved Claimants' purchase of \$1,500,000 worth of Towers Financial Corporation promissory notes ("Towers Notes") based on Respondents' solicitations and recommendations. Claimants alleged that the Towers Notes which Respondents offered and sold were unregistered and not exempt from registration under the Securities Act of 1933 and the Michigan Uniform Securities Act. Claimants contended that the purchase of the Towers Notes was made pursuant to false and misleading statements in financial and offering documents, as well as during oral sales presentations. Claimants also asserted that Respondents omitted to report material facts concerning Claimants' investment decisions. Claimants maintained that Towers Financial Corporation was, in fact, a ponzi scheme in which the principals of the corporation illegally diverted the Towers Note proceeds to their own use. Claimants asserted that Towers Financial Corporation defaulted on its notes and filed for bankruptcy in March, 1993, and that the Towers Notes are now worthless.

Respondents denied all liability in the Joint Statement of Answer. Respondents contended that the principals of Towers Financial Corporation affirmatively hid the ponzi scheme from Respondents, as well as other broker-dealers and the American public. Respondents asserted that it was the criminal conduct of Towers Financial Corporation executives which caused Claimants' losses, not any actions of Respondents. Respondents alleged that they conducted extensive due diligence investigations in order to come to the conclusion that the Towers Notes were appropriate for sophisticated investors such as Claimants.

RELIEF REQUESTED

Claimants requested an award of rescissory damages in the amount of \$2,017,632.08, attorney fees and costs in the amount of \$94,935.95, and punitive damages in the amount of \$1,500,000.00.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

NASD Regulation, Inc. Office of Dispute Resolution did not receive a voluntary submission to arbitration from East-West Group and East-West Financial Corporation, named Respondents in this action. These Respondents are not members of the NASD, or persons associated with members of the NASD, and are thus not compelled by the Rules of the NASD to arbitrate disputes in this forum. In the absence of such a voluntary submission, the NASD and Arbitration Panel have no alternative except to proceed with this action without the participation of these Respondents. Accordingly, Claimants are free to pursue their remedies against these Respondents in another forum with jurisdiction over these Respondents in accordance with applicable state or federal law.

All parties agreed to have a panel consisting of arbitrators affiliated with the securities industry.

Respondents did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed NASD Submission Agreement but are required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the arbitration panel on all issues submitted.

Respondents did not appear at the hearing. After reviewing the record and considering the representations of Claimants' attorney, Mr. Jarvis, the undersigned arbitrators have determined that Respondents have received due notice of the hearing as required under §10315 of the Code, and that arbitration of this matter would proceed pursuant to §10318 of the Code.

Claimants withdrew their claims against Respondent East-West Institutional Services, Inc. on or about November 22, 1996.

Respondent Craig A. Janutol had filed for protection pursuant to Chapter 7 of the United States Bankruptcy Code, and therefore Claimants were unable to proceed against Respondent Janutol in accordance with the Automatic Stay.

Claimants informed the panel that they had reached a settlement, in principle, with Respondent

Jonathan D. Ahlbrand that was only subject to the preparation and execution of the appropriate documentation. Claimants also informed the panel that the individual claims of Kenneth A. Keeley would not be pursued, and that the only remaining Respondent against which the Kenneth A. Keeley Trust could and would pursue its claim was East-West Capital Corporation.

The parties who appeared at the hearing 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 NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, as well as Claimant's post-hearing submission, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That Respondent East-West Capital Corporation is liable for and shall pay to Claimant Kenneth A. Keeley Trust rescissory damages in the amount of Two Million Seventeen Thousand Six Hundred Thirty Two Dollars and Eight Cents (\$2,017,632.08);
- (2) That Respondent East-West Capital Corporation is liable for and shall pay to Claimant Kenneth A. Keeley Trust attorneys' fees and costs in the amount of Ninety Four Thousand Nine Hundred Thirty Five Dollars and Ninety Five Cents (\$94,935.95);
- (3) The panel relies on Prince v. Heritage, 109 Mich. App. 189 (1991) which was cited in Claimants' post-hearing submission as authority for an award of attorney fees;
- (4) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1000 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$1,000 = \$2,000 in forum fees. Pursuant to §10332(b) of 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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall refund the hearing session deposit in the amount of \$1,000 previously deposited by the Claimants.

Pursuant to §10332(c) of the Code, Respondent East-West Capital Corporation is liable for and shall pay all forum fees in the amount of \$2,000.

Pursuant to §10319 of the Code, the panel hereby waives all postponement fees previously assessed against Respondents.

Pursuant to Rule 10333 of the Code, Respondent East-West Capital Corporation has paid to NASD Regulation, Inc. the \$500 member surcharge previously invoiced. Pursuant to Rule 10333 of the Code, Respondent East-West Institutional Services, Inc. has paid to NASD Regulation, Inc. the \$500 member surcharge previously invoiced.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures:

\s\ Joseph H. Spiegel, Esq.
Joseph H. Spiegel, Esq.
Chairperson
Industry Arbitrator

July 7, 1998
Dated:

\s\ Robert Shiffra, Esq.
Robert Shiffra, Esq.
Panelist
Industry Arbitrator

July 7, 1998
Dated:

\s\ John G. Martin
John G. Martin
Panelist
Industry Arbitrator

July 7, 1998
Dated:

For NASD Regulation use only:

Date award served on parties: July 8, 1998