

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Stuart M. Friedell and Nancy R. Friedell

and

96-01818

Name of Respondent

Hamilton Investments, Inc.  
Roger Doom

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### **REPRESENTATION OF PARTIES**

Stuart M. Friedell and Nancy R. Friedell ("Claimants") was represented by Steven E. Rau, Esq., Rau & Floyd, P.L.L.P., Minneapolis, Minnesota and Lorenz F. Fett, Esq., Lockridge Grindal, Nauen & Holstein, P.L.L.P., Minneapolis, Minnesota.

Hamilton Investments, Inc. ("Respondent Hamilton") and Roger Doom ("Respondent Doom") were represented by Terrence J. Fleming, Esq. and Lori A. Vosejka, Esq., Lindquist & Vennum, P.L.L.P., Minneapolis, Minnesota.

### **CASE INFORMATION**

The Statement of Claim was filed on or about April 29, 1996. Submission Agreement of Claimants Stuart M. Friedell and Nancy R. Friedell was signed on April 11, 1996.

Statement of Answer was filed by Respondents Hamilton Investments, Inc. and Roger Doom on or about July 25, 1996. Submission Agreement of Respondent Hamilton Investments, Inc. was signed on June 24, 1996 by Kathy M. Klock. Submission Agreement of Respondent Roger Doom was signed on July 24, 1996.

### **HEARING INFORMATION**

The hearing was held on Tuesday, March 18, 1997 for two (2) sessions and Wednesday, March 19, 1997 for one (1) session in Minneapolis, Minnesota for a total of three (3) sessions.

### **CASE SUMMARY**

Claimants alleged that Respondents violated the Minnesota Securities Act; were negligent; breached their fiduciary duty to them; and engaged in common law fraud. In addition, Claimants alleged that Respondent Hamilton is also liable to them under the common law doctrine of *respondeat superior*. Specifically, Claimants alleged that Respondent Doom failed to disclose all facts which might have affected their decision to make the investments in Alliance North American Government Income Trust Fund ("Alliance"). It was further alleged that Respondent Doom represented to the Claimants that the Alliance fund was a safe, conservative investment when in fact it was a volatile, high risk investment.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimants invested in Alliance, a fund suitable for individuals of their net worth and investment sophistication. Respondents also stated that the Claimants had actual knowledge of the market value of their investments on a continual basis, and have had complete control over the determinations whether to buy, sell or hold. It was further stated by Respondents that while the Claimants' investments in Alliance may have declined in value on a short term basis, the decline was due to a disclosed risk - adverse economic conditions.

### **RELIEF REQUESTED**

Claimants requested an award of compensatory damages in the total amount of \$97,830.57, interest, and the costs of bringing this arbitration including but not limited to, reasonable attorneys' fees, based on Minn Stat. §80A.23 subd. 2. At the hearing, Claimants represented to the arbitration panel that they were seeking rescission.

Respondents requested that the arbitration panel dismiss the claims asserted against them and award them costs and attorneys' fees incurred in this matter pursuant to Minn Stat. §549.21.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed to the dismissal of claims originally asserted against Principal Financial Securities, Inc. Principal Financial Securities, Inc. pursuant to an asset purchase agreement, acquired the assets of Hamilton Investments, Inc.

The parties 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 the 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. All claims asserted in this matter shall be and hereby are dismissed and denied in their entirety.
2. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were three (3) sessions x \$500 = \$1,500 in forum fees. Pursuant to §10332(b) 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 NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimants Stuart M. Friedell and Nancy R. Friedell. Claimants Stuart M. Friedell and Nancy R. Friedell shall be and hereby are liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$250 as forum fees. Respondent Hamilton Investments, Inc. shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$750 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **assess** against Respondent Hamilton Investments, Inc. the non-

refundable member surcharge in the amount of \$300. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

/s/ Casandra Mihalchick, Esq.  
Casandra Mihalchick, Esq.  
Public Arbitrator, Presiding Chair

Dated: March 19, 1997

/s/ Joyce G. Gordon, J.D.  
Joyce G. Gordon, J.D.  
Public Arbitrator

March 19, 1997

/s/ Julie A. Hennen  
Julie A. Hennen  
Industry Arbitrator

March 19, 1997