

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Donald Ruff, and
Melba Ruff,

Claimants,

vs.

96-03258

American Investment Services, and
Paul "Gene" Palmer,

Respondents.

REPRESENTATION OF PARTIES

Donald Ruff, and Melba Ruff ("Claimants") were represented by Bruce A. Burkey, Esq., of the Taylor Law Offices, Altmont, Illinois.

Paul "Gene" Palmer ("Palmer") appeared on his own behalf.

American Investment Services ("AIS") was represented by Jerome H. Ferguson, III, Esq., and Douglas D. Darnold, Esq., of Ferguson & Company, Dallas, Texas.

CASE INFORMATION

Claimants filed the Statement of Claim on or about July 18, 1996. Claimants' Submission Agreement was signed on July 18, 1996.

AIS filed its Statement of Answer on or about September 5, 1996. AIS' Submission Agreement was signed on November 12, 1996.

NASD Regulation, Inc. Dispute Resolution does not have an Answer or Submission Agreement on file for Palmer.

HEARING INFORMATION

Telephonic hearings on AIS' Motion to Dismiss were held on March 17, 1997 for one (1) session and on June 2, 1997 for one (1) session.

CASE SUMMARY

In their Statement of Claim, Claimants alleged that: AIS and Palmer made misstatements to them about Towers Financial Corp. ("Towers") which resulted in Claimants investing in the March 23, 1992 private offering of a non-negotiable recourse promissory note issued by Towers; within one year, Towers had filed for relief in bankruptcy; within another year, the trustee in bankruptcy had brought civil and criminal actions against Towers; and Towers was, "Run as a huge ponzi scheme".

Unless otherwise admitted therein, AIS denied the allegations set forth in the Statement of Claim. AIS specifically denied that: It is liable for the debts of Towers including those to Claimants; and Claimants had sufficient sophistication so that Claimants knew and understood the risks of the loan that they were making to Towers and that such risk was in the financial capabilities of the Claimants. In addition, AIS asserted the following defenses: Statute of limitations; statute of frauds; collateral estoppel; res judicata; accord and satisfaction; and release.

RELIEF REQUESTED

Claimants requested an award against AIS and Palmer in the amount of \$25,000 plus interest at five percent (5%).

AIS requested that Claimants take nothing by their claim and that the claim be dismissed and that AIS be awarded its attorneys' fees, costs and expert witness fees in connection with this arbitration.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Palmer did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

On or about September 5, 1996, contained in the Answer filed by AIS, AIS requested that the Statement of Claim be dismissed because, on its face, the claim was barred by the statute of limitations. On or about February 10, 1997, AIS filed a formal Motion to Dismiss based on the following assertions: Claimants' failed to state any claim against AIS upon which relief might be granted; Claimants' claim was barred by applicable federal statute of limitations periods, as well as any allegedly applicable state statute of limitations periods; and Claimants' disregard of NASDR's Code and Claimants' failure to permit discovery in this matter. On or about February 26, 1997, Claimants filed their response. On or about February 28, 1997, AIS filed its reply to Claimants' response. A Motion hearing was held on March 17, 1997 with the undersigned arbitrator. At the hearing held on March 17, 1997 Palmer made an oral Motion to Dismiss Claimants' Statement of Claim. After review of the pleadings, the motion and responses, and

hearing argument from the parties the undersigned arbitrator made the following rulings: AIS' motion was denied, however, Claimants were only allowed to pursue a claim of common law tort negligent misrepresentation in this arbitration; Palmer's Motion to Dismiss was denied; and Palmer's request for a continuance was granted for 120 days.

On or about March 20, 1997, AIS filed a supplement to the Motion hearing held on March 17, 1997. AIS again requested that Claimants' out-of-time claim be dismissed entirely based on the additional information contained in the March 20, 1997 supplement. On or about March 26, 1997, AIS formally requested reconsideration of its Motion to Dismiss. On or about April 21, 1997, Claimants filed their response to AIS' request for reconsideration. On or about May 30, 1997, AIS filed a supporting document to be used in conjunction with the second Motion hearing set on June 2, 1997. During the course of the June 2, 1997 motion hearing, the undersigned arbitrator heard argument from the parties concerning the request for reconsideration of Arbitrator Lansing's prior Order. After deliberation and review of the documents and pleadings, Arbitrator Lansing has arrived at a decision which is set forth more fully below.

AWARD

After considering the pleadings, the motion papers, and the argument presented at the hearings, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

AIS' Motion to Dismiss is granted. Claimants' claims made against AIS and Palmer are, and each of them, denied with prejudice.

Each party shall bear its own costs, fees, and expenses, including attorneys' fees, incurred in this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session. There were two (2) sessions x \$300 = \$600 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 \$100 and shall retain as forum fees the hearing session deposit in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-03258
Award Page 4 of 4

Pursuant to §10333 of the NASD Code of Arbitration Procedure, AIS is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the non-refundable member surcharge in the amount of \$200.

Additional forum fees in the amount of \$300 are assessed by the arbitrator against the Claimants.

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

Paul Lansing
Paul Lansing
Sole Public Arbitrator, Presiding Chair

Dated:

12 June 97