

9716378

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

10/97

Names of Claimants

Helen and Luis Hernandez

96-04629

Names of Respondents

Rickel & Associates, Inc.

Paul P. Kotos

Ross E. Noble

REPRESENTATION

For Claimants: Robert Dyer, Esq. of the law firm of Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., Orlando, Florida.

For Respondent Rickel & Associates, Inc. ("Rickel"): Stephen G. Rinehart, Esq. of the law firm of Rickel & A. Parker Chapin Flattau & Klimpl, LLP, New York, New York.

For Respondent Paul Kotos ("Kotos"): Daniel S. Newman, Esq. of the law firm of Tew & Beasley, P.A., L.L.P., Miami, Florida.

The Respondent Ross E. Noble ("Noble") appeared pro se.

CASE INFORMATION

Statement of Claim filed: October 17, 1996.

Claimants' Submission Agreement signed on: October 8, 1996.

Settlement Agreement plus attachments filed on: September 11, 1997.

Claimants' Position Re Enforcement of Settlement Agreement dated September 12, 1997.

Statement of Answer filed by Respondent Paul Kotos on: December 19, 1996.

Respondent Paul Kotos' Submission Agreement signed on: December 19, 1996.

Statement of Answer filed by Respondent Rickel & Associates, Inc. on: December 18, 1996.

Respondent Rickel & Associates, Inc.'s Submission Agreement signed on: November 18, 1996.

The Respondent Ross E. Noble did not file an executed Submission Agreement or Statement of Answer as required pursuant to Rule 10314 of the Code of Arbitration Procedure.

### HEARING INFORMATION

Two pre-hearing conferences were conducted with the arbitration panel on April 18, 1997 and September 15, 1997. In addition, two pre-hearing conferences were conducted with the Chairman on August 12, 1997 and September 11, 1997.

### CASE SUMMARY

Claimants alleged they were sold highly speculative and unsuitable Conquest Airline notes by Respondents Rickel and Associates, Inc., Paul Kotos and Ross Noble and sought damages for the loss on these notes, plus interest and punitive damages.

Claimants next alleged that the parties through their respective counsel agreed to settle this matter by the payment of \$95,000.00 by Rickel to Claimants by four equal payments, with Mr. Kotos to be dismissed from the arbitration upon the first payment in November of 1997. Claimants further asserted that counsel for Rickel had authority at that time to make the agreement on behalf of Rickel and to draft the instruments for delivery to counsel for the Claimants. Claimants further maintained that Rickel breached the agreement.

Respondent Kotos alleged that Claimants brought this action seeking damages for the alleged sale of unsuitable securities. Respondents Rickel & Associates, Inc. and Mr. Kotos denied any and all liability for the sale of the allegedly unsuitable securities to Claimants. Furthermore, Respondent Kotos denied that the securities at issue were unsuitable.

Respondent Kotos next asserted that prior to the arbitration in this matter Claimants and Rickel reached a settlement agreement (the "Agreement") in which Rickel agreed to pay Claimants the total amount of \$95,000.00, with the first of those payments to be made upon execution of the Agreement and the remainder of the payments to be made in the three (3) monthly installments. Furthermore, Respondent Kotos alleged that the Agreement required that upon compliance with its terms, Claimants would dismiss, with prejudice, the action against Mr. Kotos.

Respondent Kotos alleged on August 13, 1997, counsel for Rickel forwarded to counsel for Claimants the Agreement, in a form acceptable to Rickel, and, furthermore, counsel for Rickel forwarded a letter for Claimants' signature dismissing the action against Mr. Kotos, with prejudice. Respondent Kotos asserted the Agreement was executed by Claimants and the letter dismissing the action against Mr. Kotos with prejudice was signed by counsel for Claimants on August 21, 1997.

Respondent Kotos maintained on or about September 10, 1997, counsel for Rickel contacted counsel for Claimants and counsel for Mr. Kotos, and advised them that Rickel would not comply with the terms of the Agreement and counsel for Claimants moved to enforce the Agreement.

Respondent Rickel & Associates, Inc. maintained that its broker-dealer registration will be withdrawn shortly and it is not prepared to settle the case.

Respondent Rickel & Associates, Inc. next asserted that the draft settlement document provides that the first settlement shall be due "upon the full execution of this Agreement by the Claimants and Rickel" and Rickel has not executed the document, and, therefore, the obligation to make payment has not arisen.

Respondent Rickel next maintained that Rule IM-10100 of the Code of Arbitration Procedure provides that "it shall be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member.. to: (d) fail to... comply with a written and executed settlement agreement..." Respondent Rickel maintained that because the document at issue here was not executed by Rickel, it is not a "written and executed settlement agreement" and, therefore, is not enforceable by the NASD.

Respondent Rickel further alleged the NASD rules do not specifically authorize the arbitrators to render an award based upon an unexecuted and unconsummated settlement proposal; therefore, Rickel opposed the entry of an award in the sum of \$95,000.00 plus interest.

### **RELIEF REQUESTED**

Claimants requested an entry of an Award against Respondent Rickel in the sum of \$95,000.00 plus interest and punitive damages.

Respondent Kotos requested a dismissal of all claims against Respondent Kotos and enforcement of the settlement agreement entered into between the Claimants and Respondent Rickel in the form of an entry of an Award against Respondent Rickel in favor of the Claimants in the sum of \$95,000.00 plus interest.

Respondent Rickel requested a dismissal of all claims against it and a denial of the Claimants' request for an entry of an Award against Respondent Rickel in favor of the Claimants in the sum of \$95,000.00 plus interest.

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

On December 16, 1996 NASD Regulation, Inc. was informed that the Claimants were dismissing without prejudice all claims against Respondent Ross Noble.

On September 26, 1997 counsel for the Claimant informed NASD Regulation, Inc. that Claimants were dismissing with prejudice all claims against Respondent Paul Kotos.

This matter came before the arbitration panel on September 11, 1997, via conference call, when a Motion was made by counsel for Claimants to enforce the parties' settlement agreement by entry of an Award. On September 15, 1997 the arbitration panel heard arguments on Claimants' Motion to Enforce Settlement Agreement. Upon consideration of the Motion, all documentation on file and the argument of counsel, the arbitration panel determined that the agreement was binding and determined to enter an Award in the amount of \$95,000.00 plus simple interest at the rate of 10% per annum from August 22, 1997 until the date of payment of the Award in favor of the Claimants against the Respondent Rickel.

### **AWARD**

After considering the pleadings, the documentation submitted and the oral argument of counsel, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

As stated above in "Other Issues" the Respondent Rickel & Associates, Inc. is liable and shall pay to the Claimants the sum of \$95,000.00 plus simple interest at the rate of 10% per annum from August 22, 1997 until the date of payment of the Award.

9711302  
The Claimants' request for punitive damages is denied.

Each party shall bear their respective costs including attorneys' fees.

### FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$1,600.00 (two pre-hearing conferences: panel-\$1,000.00 plus two pre-hearing conferences: chairman-\$600.00) are assessed as follows:

The Claimants are assessed the sum of \$800.00 less the \$500.00 previously deposited in partial satisfaction thereof leaving a balance due in the sum of \$300.00.

The Respondent Rickel is assessed the sum of \$800.00.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

/s/  
Stanley Lampert, Esq.

Public

/s/  
James D. Keeney, Esq.

Public

/s/  
Joseph G. Lananna

Industry

Date of Decision: October 9, 1997