

FINAL ORDER

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

William H. Daniel,

Claimant,

and

Case Number: 96-04634

Joe Psalmonds, Jr.,

Respondent.

REPRESENTATION OF PARTIES

Claimant William H. Daniel ("Claimant") was represented by William S. Shepherd, Esq. of William S. Shepherd & Associates, P.C. located in Houston, Texas.

Respondent Joe Psalmonds, Jr. ("Respondent") was represented by Michael Schwartzberg, Esq. of Luboja & Thau, LLP located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about October 18, 1996.

Claimant's Submission Agreement was signed on October 15, 1996.

Respondent's Motion to Dismiss was filed on or about January 28, 1997.

Respondent did not file a Submission Agreement.

Respondent's Supplemental Brief in Support of Respondent's Motion to Dismiss was filed on or about August 18, 1997.

Claimant's Response to Respondent's Motion to Dismiss was filed on or about August 19, 1997.

Claimant's Post-Hearing Brief was filed on or about September 15, 1997.

Respondent's Post-Hearing Brief was filed on or about September 15, 1997.

HEARING INFORMATION

The telephonic hearing on Respondent's Motion to Dismiss was held on August 26, 1997 for one (1) session.

CASE SUMMARY

Claimant alleged that he was sold an unsuitable investment in National Lease Income Fund 5 for \$100,000 by an agent of the Respondent. Claimant maintained that this investment was not suitable for someone who was 66 years old, retired, and with limited income. Claimant contended that he was promised a 12% return for 6 years with his principal returned in years 6 and 7. Claimant maintained that he did not receive a return on his investment as promised.

Respondent moved to dismiss the Statement of Claim on the grounds that the investment at issue was purchased by Claimant in 1986, more than a decade ago, and thus not eligible for submission to arbitration under Rule 10304 of the NASD Code of Arbitration Procedure. Respondent alleged that the NASD does not have jurisdiction over any purchase made more than 6 years prior to filing of the Statement of Claim.

In response, Claimant contended Respondent and his agents continuously convinced Claimant to keep the investment, and repeatedly assured Claimant that it was an appropriate investment for him. Claimant maintained that, up until 1990, the investment was misrepresented to him as having a redemption value equal of what he paid for it. Claimant asserted that the facts demonstrate that Respondent continued to misrepresent the value of the investment in a continued fraud against Claimant and alleged that Rule 10304 does not apply until the last element of the fraud takes place.

RELIEF REQUESTED

At the telephonic hearing on Respondent's Motion to Dismiss, Respondent requested that his Motion to Dismiss be granted and that the Statement of Claim be dismissed in its entirety.

Claimant requested that the Motion to Dismiss be denied in its entirety, that this matter proceed to hearing and that Claimant be granted any and all relief, in law or in equity, to which he is justly entitled.

OTHER ISSUES CONSIDERED & DECIDED

Claimant dismissed Respondents JPJ Investments, National Lease Income Fund V, Resources Trust, and Steven I. Weinstein from this matter without prejudice.

Respondent 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 ("Code") and having appeared and answered the claim is bound by the determination of the arbitration panel on all issues submitted.

FINAL ORDER

After considering the pleadings and the oral argument presented at the telephonic hearing, as well as the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

That the Motion to Dismiss the Case as Prescribed be granted without prejudice to re-file any claim not so prescribed at the time of the original complaint.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 per pre-hearing session, if any. There was (1) hearing session x \$750 = \$750 in forum fees. Total forum fees = \$750. 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 \$200 and shall retain a portion of the hearing session deposit in the amount of \$375 (½ forum fees) previously deposited with NASD Regulation, Inc. by the Claimant.

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Pursuant to §10332(c) of the Code, Respondent shall pay to NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$375 (½ forum fees).

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

Concurring Arbitrators' Signatures

\s\ William D. Hawkland
William D. Hawkland, Jr., Esq.
Chairperson
Public Arbitrator

March 12, 1998
Dated:

\s\ Daniel M. Bercaw
Daniel M. Bercaw
Panelist
Public Arbitrator

March 9, 1998
Dated:

\s\ Carlie M. Kahn
Carlie M. Kahn
Panelist
Industry Arbitrator

February 20, 1998
Dated:

For NASD Regulation use only:
Date award served on the parties: March 12, 1998