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AWARD

NASD Regulation, Incorporated Office of Dispute Resolution

In the Matter of Arbitration Between

Mitchell Maximoff and Jean Maximoff,

Claimants,

and

No. 96-05816

Andy Tomlinson, Jr., and Hornor Townsend & Kent, Inc.,

Respondents.

REPRESENTATION OF PARTIES

Claimants, Mitchell Maximoff and Jean Maximoff (hereinafter collectively referred to as "Claimants"), were represented by Charles S. Price, Esquire of Allen & Price, PLC, located in Phoenix, Arizona.

Respondents, Andy Tomlinson, Jr. ("Tomlinson"), and Hornor Townsend & Kent, Incorporated (hereinafter collectively referred to as "Respondents"), were represented by James L. Blair and Diane Mihalsky, Esquires of Renaud, Cook & Drury, P.A., located in Phoenix, Arizona.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about December 30, 1996.

Claimants' Amendment to the Statement of Claim was filed on or about May 30, 1997.

Claimants' Submission Agreement was signed on November 4, 1996.

Respondent Tomlinson's Statement of Answer was filed on or about April 4, 1997.

Respondent Tomlinson's Statement of Answer to Claimants' Amendment to the Statement of Claim was filed on or about June 26, 1997.

Respondent Tomlinson's Submission Agreement was signed on April 3, 1997.

Respondent Hornor Townsend & Kent, Incorporated's Statement of Answer was filed on or about April 18, 1997.

Respondent Hornor Townsend & Kent, Incorporated's Statement of Answer to Claimants' Amendment to the Statement of Claim was filed on or about June 26, 1997.

Respondent Hornor Townsend & Kent, Incorporated's Submission Agreement was signed on September 11, 1997.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: September 11, 1997 for two (2) sessions; and September 12, 1997 for one (1) session.

The hearing was held in Phoenix, Arizona.

CASE SUMMARY

Claimants brought this action against Respondents to recover the sum of \$42,418.79 from Claimant's investment in Fidelity Leasing Income Fund VIII, alleging that Tomlinson was in remiss for not making a full understandable disclosure of his recommended investments and failure to provide periodic review and update their funds. According to Claimants, Tomlinson was advised that Mitchell Maximoff lacked experience and depended on Tomlinson to make appropriate recommendations. Claimants also maintained that Mitchell Maximoff advised Tomlinson that it was of utmost importance to preserve principal investment with minimal risk and that he could adjust his living standard to his interest income.

Claimants stated that on March 24, 1992 the Pilgrim adjustable U. S. Government #1 fund was purchased for \$75,000.00, which Mitchell Maximoff understood was in ARMS-FNMA & GNMA. According to Claimants, Tomlinson stated that this fund had a built in safety that would at some point compensate for any share value loss. They further stated that Mitchell Maximoff was never informed that the fund was not related to the U. S. Government or that it involved an investment in the southern California depressed market. Claimants reported that, with Mitchell Maximoff's permission, the original fund was transferred first to the Pilgrim adjustable U. S. Government Sec. Trust, which was dated July 14, 1992, and then to the Pilgrim adjustable rate Securities Trust #1, which was dated March 10, 1994. They further reported that Pilgrim sold its assets to Astra in 1995.

Claimants further stated that on August 21, 1991, at Tomlinson's suggestion, Mitchell Maximoff invested \$45,000 in Keystone Tax Exempt Trust, which was redeemed on April 11, 1994 for \$45,352.83. Claimants alleged that, in view of Mitchell Maximoff's low income level and low tax payment for that year, it was unsuitable for them to be put into a tax-exempt investment.

Respondents denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. They contended that Tomlinson disclosed all risks associated with investments in the Fidelity Leasing Income Fund VIII and the Pilgrim Adjustable Rate Securities Trust, both in his conversations with Mitchell Maximoff and in the prospectuses that Claimants acknowledged having received, read, and understood when they invested in the funds. According to Respondents, Mitchell Maximoff studied each of the investment decisions he made, questioned Tomlinson at length about them, consulted with investment advisers, and made his own personal investment decisions. Respondent further contended that Claimants allegation that their only and primary investment objective was to minimize risk contradicts the application they signed and the investment decisions they made. Respondents also asserted that Tomlinson carefully and accurately translated the financial information provided to him by Claimants into a projection of their expected benefits from an investment in the Keystone Tax-Exempt Trust.

RELIEF REQUESTED

Claimants requested an award for compensatory damages relating to their losses in the aforementioned investments.

Respondents requested that the claims asserted against them be dismissed in their entirety; that pursuant to A.R.S. § 12-341.01 they be awarded their attorneys' fees incurred in this matter; and that they be awarded their costs under § 43(c) (currently known as § 10332) of the NASD Code of Arbitration Procedure.

OTHER ISSUES CONSIDERED AND DECIDED

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, Incorporated 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. Andy Tomlinson, Jr. and Hornor Townsend & Kent, Inc. are jointly and severally

liable for and shall pay Mitchell Maximoff and Jean Maximoff compensatory damages of \$15,000;

2. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

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 no pre-hearing conferences and there were three (3) hearing sessions $\times \$500 = \$1,500$ in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (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, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$150 and shall retain as forum fees the hearing session deposit of \$500 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Mitchell Maximoff and Jean Maximoff.

Mitchell Maximoff and Jean Maximoff are jointly and severally liable for and shall pay the NASD Regulation, Incorporated additional forum fees of \$250 ($= \frac{1}{2} \$1,500$ total forum fees - \$500 hearing session deposit).

The NASD Regulation, Incorporated Office of Dispute Resolution shall retain postponement fees of \$500 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Mitchell Maximoff and Jean Maximoff.

Andy Tomlinson, Jr. and Hornor Townsend & Kent, Incorporated are jointly and severally liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution forum fees of \$450 ($= \frac{1}{2} \$1,500$ total forum fees - \$300 credit for overpayment).

The NASD Regulation, Incorporated Office of Dispute Resolution shall retain postponement fees of \$500 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Andy Tomlinson, Jr.

Pursuant to § 10333 of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable member surcharge of \$300 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Hornor Townsend & Kent, Incorporated.

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

Concurring Arbitrators' Signatures

Robert S Mautner
Robert S Mautner, Esquire
Chairperson
Public Arbitrator

/s/

October 3, 1997
Dated:

Charles E. Dew
Charles E. Dew
Panelist
Public Arbitrator

/s/

October 6, 1997
Dated:

Brigitte E. von Wienken
Brigitte E. von Wienken
Panelist
Industry Arbitrator

/s/

October 6, 1997
Dated:

For NASD use only:
Date Award was served on the parties: _____