

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION, INC.

CASE:99-03421

Kenneth and Lanora McKee, Claimants vs. Richard F. Robinson, Jr., Respondent.

ATTORNEYS:

For Claimant appeared Jeffrey P. Coleman, Esq., Clearwater, FL.

Respondent Richard Robinson, Jr. appeared Pro Se, Jacksonville, FL.

DATE FILED: July 27, 1999

CASE SUMMARY: Claimants alleged that Respondent recommended they purchase three unsuitable investment promissory notes which defaulted, thereby causing losses to their account. Claimants further alleged breach of fiduciary duty, misrepresentation, and omission of material facts relating to the investment recommendations.

ARBITRATOR'S REPORT: See attached Exhibit A.

Claim Data

Claim: \$24,999.00
Punitive: unspecified
Interest: at the statutory rate

Attorney Fees: unspecified

Filing Fees: unspecified
Other: unspecified

Award Data

Award: \$24,999.00
Punitive: \$.00
Interest: at the statutory rate less interest actually received, totaling \$13,707.86 as of 8/30/01 and accruing thereafter at the statutory rate until the date of payment of this award.
Attorney Fees: awarded as Claimants prevailed under Florida Security and Investor Protection Act.
Filing Fees: \$425.00
Other: \$.00

AWARD: The undersigned Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable and shall pay to the Claimants \$24,999.00. 2) Respondent is liable and shall pay to the Claimants interest at the statutory rate less interest actually received, totaling \$13,707.86 as of 8/30/01 and accruing thereafter at the statutory rate until date of full payment of this award. 3) All requests for attorney fees are granted as Claimants prevailed under Florida Security and Investor Protection Act. 4) All requests for punitive damages are denied. 5) All other relief requests are denied. 6) The \$425.00 filing fee previously deposited with NASD Dispute Resolution, Inc. by the Claimants, shall be retained by NASD Dispute Resolution, Inc.

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Award 99-03421

7) Respondent is liable and shall pay Claimants \$425.00 as reimbursement of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent's firm Sunpoint Securities, Inc. has paid to NASD Dispute Resolution, Inc. the \$400.00 Member Surcharge previously invoiced.

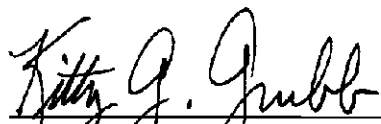
Kitty G. Grubb, Esq.

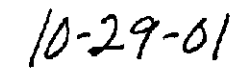
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Sole Public Arbitrator

AFFIRMATION

I, Kitty G. Grub, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Kitty G. Grub, Esq.


Signature Date

January 9, 2002
Date of Service (For NASD-DR office use only)

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION (NASD)

KENNETH McKEE
and
LANORA I. McKEE,

Claimants,

v.

RICHARD F. ROBINSON, JR.,

Respondent.

NASD-DR
Arbitration #99-03421

(Simplified Arbitration Procedure)

ARBITRATOR'S REPORT

Introduction. This NASD Arbitration proceeded under, and this Award of the Arbitrator is rendered pursuant to, the Simplified Arbitration Procedure of NASD-DR Code of Arbitration Procedures.

Representation of Parties: Claimants. Kenneth McKee and Lanora I. McKee (collectively sometimes "Claimants" or "McKee's") are husband and wife who made the investments in-question. Claimants resided in DeBary, FL. Claimants were represented by Jeffrey P. Coleman, Esq. of Clearwater, FL.

Respondent. Respondent Richard F. Robinson, Jr. (sometimes "Respondent" or "Respondent Robinson") was Claimants' account executive; he was with at least three (3) different broker-dealers during his representation of Claimants. (Sunpoint Securities, one of the three (3) broker-dealers employing Respondent, was originally named as a respondent in this Arbitration; however, Sunpoint

Securities filed for bankruptcy, and per NASD, is not now a respondent herein.) Respondent Robinson offered his investment services to Claimants in the State of Florida.

Case Information. Statement of Claim filed on or about: July 12, 1999.

Claimants McKee signed the Uniform Submission Agreement: July 12, 1999.

Statement of Answer filed by Respondent Robinson on or about: September 16, 1999.

Respondent Robinson signed the Uniform Submission Agreement: September 17, 1999.

Case Summary. Causes of Action. Claimants' claims relate to their purchase of three (3) investment promissory notes which defaulted. For their causes of action against Respondent Robinson, Claimants assert Respondent violated: Florida Security and Investor Protection Act of Chapter 517 of the Florida Statutes, including but not limited to, §517.301; Florida Administrative Code; NASD Rules of Fair Practice, Article III; and so forth. Claimants further assert Respondent misrepresented *material facts, omitted material facts, and breached his fiduciary duties, including his recommending unsuitable investments.*

Defenses. Unless specifically admitted in his Statement of Answer, Respondent Robinson denied all the allegations made in Claimants' Statement of Claim, and also asserted the following defenses: due diligence; suitability; suitable investments, in part, due to being "asset-backed"; intervening causes,

such as mismanagement or misappropriation of invested funds by management at the underlying businesses making the obligations, i.e., the investment notes; no causation of damages; "observ(ance) of high standards of commercial honor, and just and equitable principles"; no manipulation; no fraud; and so forth.

Relief Requested. Due to the three (3) investment notes' defaulting, Claimants seek damages in the collective amount of principal lost, \$24,999. (While Claimants assert actual damages due to lost principal in excess of such amount, they have stipulated and agreed to accept an award within NASD Simplified Arbitration Procedure's jurisdiction, \$25,000. See Claimants' [August 30] Response to Arbitrator's Order dated August 2, 2001, p. 2, item 6). Claimants also seek statutory interest, attorney's fees and related costs, punitive damages in an unspecified amount, filing and forum fees, and such other relief as is appropriate.

Respondent Robinson denies owing any money (\$0) whatsoever to Claimants, and denies Claimants are entitled to any relief from him.

Dates and Place of Arbitration. This Arbitration File and other materials were received by the Arbitrator on July 30, 2001 in Seminole, FL.; since such time, this arbitral matter has been under review and analyzation, with additional responsive documentation and information supplied by Claimants pursuant to the Arbitrator's Order. No (0) additional documentation nor information was supplied by Respondent in response to such Order.

Investments-at-Issue. Acting upon the solicitation and advice of Respondent Robinson, Claimants invested in the following investments in the corresponding amounts, at or about the respective date shown, with the corresponding amount of principal thereof subsequently in default:

	<u>Total Investment</u>	<u>Date of Investment</u>	<u>Amount of Principal in Default</u>
Keller Financial Services of Pinellas, Inc. ("Keller")	\$30,000	02/10/94	<\$19,059.37>
Avalon Development V., L.C. ("Avalon")	\$10,000	12/17/96	<\$ 4,907.48>
U.S. Automobile Acceptance SNP-III, Inc. ("USAA")	\$ 5,000	12/19/96	<\$ 2,696.41>

All of the above-delineated three (3) investment transactions by Claimants occurred in, or have a substantial nexus to, the State of Florida.

Public Arbitrator. Kitty G. Grubb of Seminole, FL. serving as sole Arbitrator pursuant to NASD Simplified Arbitration Procedure.

Additional Findings of Facts and Conclusions Therefrom. Both Claimants were in their seventies (70+'s), agewise, when they made these investments. They lived in a mobile home. Per the completed New Account Approval ("Approval") form's "Client Profile" ("Profile") for Claimants, Claimants' annual income was \$20,000 or less, their savings, \$0-9,999 (the lowest possible valuation amount on the Profile), and their tax bracket, 10%-19% (the lowest possible bracket on the Profile). Also, according to this Approval form, the McKee's investment objectives were "Capital Preservation" and "Income", not "Business Risk" nor "High-Risk Speculation", other potential objectives on the form.

This Arbitration involves three (3) different entities' supposedly "secured", "asset-backed" investment notes recommended to Claimants by Respondent Robinson; all such notes ultimately defaulted on payment obligations. Claimants' total amount invested was \$45,000: most of this sum was never repaid to Claimants by the three (3) underlying promissory notemakers. These investments were specifically represented to Claimants as being "secured" - - for example, one of the Subscription Agreements has the word "Secured" in bold typeface in its heading, such word was further referenced three (3) times in the body of Agreement, as well as similar representations of material fact made by Respondent Robinson concerning the security of all of these investments.

All of the investments recommended by Respondent Robinson to Claimants involved highly speculative enterprises. Two (2) of the three (3) Respondent-recommended investments, representing the vast majority of Claimants' financial investment (\$35,000 out of \$45,000), were concentrated a single industry-segment, auto-finance.

Respondent Robinson admits his broker-dealer at the time "represented Keller to be an ideal investment for conservative investors ..." and that the related "sales brochures featured photos of retired people who were quoted as being very pleased with their investment in Keller". (See Respondent's Statement of Answer, p. 1, 3rd ¶.) Contrary to Respondent Robinson's asserted defenses, none of the three (3) recommended investments was appropriate or suitable for Claimants. By illustration, the largest of the 3 investments was \$30,000 in Keller notes, notes not rated by any rating agency. (See Keller Financial Services of Pinellas, Inc., October 28, 1993 document, p. 9, item (c)). There was no (0) "public or other market" for such Keller notes, nor could there be any

assurance such a market would develop in the future. (Id. at p.10, item 4.) Keller "[n]otes were subject to certain restrictions on their transfer" and there was a "lack of a market" for the notes sold to Claimants; such notes were supposed to be purchased "only as a long-term investment" due to an inability of the noteholders to liquidate their investment in the notes in the event of emergency or for any other reason. (Id.) Additionally, and contrary to Claimants' investment objectives, these Keller notes were "non-self-amortizing" (Id. at p. 9, item (e)), in that, there was no (0) provision for any amortization of the principal amount prior to maturity; thus, Keller's ability to "repay at maturity the outstanding principal amount of such loans (was) dependent upon (Keller's) ability to collect the [c]ontracts at a profit". (Id.) Claimants never specified "Long-Term" nor "High-Risk Speculation" as their respective investment objectives; rather, Claimants specified virtually the opposite thereof, including informing Respondent in writing that their objective was "Capital Preservation".

Further, Keller had "no operating history..." (Id. at p. 12, item 8) – in fact, such corporation had been formed in the State of Florida only a few months before its investment notes were issued. Additionally, Keller had no (0) "independent management", but rather, was to rely on the officers and directors and their affiliates for the corporation's operation. (Id. at item 10.) Yet, management and its affiliates were to "devote only so much of their time" to Keller "as in their judgment was reasonably required". (Id.) Compounding such potential management issues at Keller were already-existing conflicts of interest, i.e., "management and its affiliates will have conflicts of interest in allocating management time, services, and function" between Keller and "any future entities which they may organize, as well as other business ventures in which they are involved". (Id.) Also, Keller's business was not "diversified, in that it will own only the [c]ontracts". (Id. at item 7.)

Furthermore, the "uncertainly (sic) and risk of an investment in the [n]otes (was) increased to the extent that investors (were) unable to evaluate for themselves the economic merit of [c]ontracts. Although (Keller) (was) currently seeking suitable [c]ontracts, no agreement or understanding ha(d) been reached for any specific [c]ontracts". (Id. at p. 11, item (e).) Also, there was no (0) diversity, but rather concentration, concerning Keller's future asset-acquisition of contracts. (Id. at item 5(b).)

One of the other notemakers, Avalon, was in real estate development. The amount of funds Avalon intended to raise for its ventures was "\$1.5 million". (See years-subsequent March 10, 1999 Letter from Douglas Guiland to Noteholders, p. 1, ¶1.) Yet, merely \$590,000+ was actually raised. (Id.) Of this \$590,000+, only \$321,000+ was invested into the proposed real-estate project. (Id. at ¶2.) Almost needless to write, there was a severe "shortfall in the financing for the project". (Id.) Adding to this enterprise's list of problems was a SEC investigation into the venture's sole founder and operator. (Id. at ¶1 and ¶3.) In "June, 1997, a court appointed Receiver began supervising the activities of such (under-SEC-investigation) individual's" companies, including the entity whose notes Claimants had invested in. (Id. at ¶3.)

Respondent Robinson omitted material facts from Claimants concerning these investments, recommended unsuitable investments, and also breached his fiduciary duties to Claimants. In so doing, Representative Robinson violated Florida Security and Investor Protection Act, Florida common law, as well as NASD's Rules. Respondent's breaches and violations were the direct cause of damages and losses by Claimants. Further, the Arbitrator finds and rules that Respondent's actions and inactions violated Florida Statutes, including, but not limited to, Florida §517.301, with Claimants'

prevailing thereunder, among other theories allowing attorney's fees and related costs; Claimants are thus entitled to such attorney's fees and related costs.

Relief Conferred. After considering the pleadings, documentary evidence, and all other submissions herein, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimants shall be, and the same hereby are, AWARDED the sum of \$24,999 as damages for their lost principal. In addition thereto, Claimants shall be, and the same hereby are, AWARDED statutory interest in accordance with the laws of the State of Florida in the net total amount of \$13,707.86 as of 08/30/01, calculated as follows: \$26,682.55 accrued statutory interest minus \$12,974.69 interest actually received by Claimants during the time-period; provided, further, such statutory interest shall CONTINUE TO ACCRUE from 08/30/01 thereon, at the statutory rate, until all amounts owed to Claimants shall be paid in full. Respondent Robinson shall be, and the same hereby is, LIABLE AND RESPONSIBLE to pay all (100%) of such sums to Claimants.

Attorney's Fees and Related Costs. Pursuant to State of Florida laws, as well as the mandates from the Supreme Court of Florida in *Moser v. Barrow Chase Sec. 's*, 2001 Fla. LEXIS 628 (April 5, 2001), among other theories permitting a court's awarding attorney's fees and related costs, the Arbitrator specifies finds and rules Claimants PREVAILED under Florida Security and Investor Protection Act of Chapter 517 of the Florida Statutes, including, but not limited to, §517.301. Respondent violated such Florida Statutes and is LIABLE and RESPONSIBLE for Claimants' having to incur all of such

expenses and costs; Claimants are ENTITLED to have such paid by Respondent. Therefore, Claimants shall be, and the same hereby are, also AWARDED their attorney's fees and related costs. Respondent Robinson shall be, and the same hereby is, LIABLE FOR AND ASSESSED all (100%) of Claimants' attorney's fees and related costs. The Arbitrator further notes Claimants' Counsel most zealously and cogently presented Claimants' claims herein.

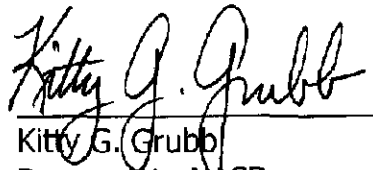
Pursuant to the Code, the following fees are assessed:

Filing Fees: \$425.00

Respondent Robinson shall be, and the same hereby is, LIABLE FOR AND ASSESSED all (100%) of the above Fees.

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

Public Arbitrator



Kitty G. Grubb
Pursuant to NASD
Simplified Arbitration Procedure

10-29-01
Signature Date