



N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimants

William & Angeline Dietrich

Case #
89-01504

vs

Name of Respondents

Janney Montgomery Scott, Inc.,
Gateway Financial Group, Inc. and
Donald J. Settina

Heard before the members of the Arbitration Panel:

<u>Name</u>	<u>Public/Industry</u>
Frederich E. Liechti	Public
Richard J. Beisel	Public
Timothy D. Wasson	Industry

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on May 17, 1989. Claimants, allege that Respondent, Donald J. Settina, on behalf of Respondents, Janney Montgomery Scott, Inc. and Gateway Financial Group solicited Claimants and succeeded in getting them to purchase 4,000 units of Independent American Participating Income Fund, L.P., a Delaware limited partnership. Claimants contend that said investment was unsuitable for them. Claimants further contend that Respondents: (1) committed fraud; (2) breached their fiduciary duties; (3) failed to supply them with a prospectus; and (4) were negligent.

In a Statement of Answer filed with the NASD on February 20, 1990, Respondents deny the allegations of fraud, negligence and any other wrongdoings. Respondents contend that Settina was not employed by Gateway Financial Group, Inc. and therefore cannot be held liable for Settina's actions. Respondents also interposed seven affirmative defenses.

RELIEF REQUESTED

Claimants requests that the panel grant them an award, jointly and severally for \$92,000, interest, punitive damages, costs and attorney's fees.

Respondents request all claims be denied.

AWARD

On October 24, 1990, and November 16, 1990, in Pittsburgh, Pennsylvania during a hearing lasting four sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, William and Angeline Dietrich on July 11, 1989, and signed by John Zacharus on behalf of Respondent, Janney Montgomery Scott, Inc. on October 24, 1990. Respondent, Gateway Financial Group, Inc., did not execute a submission agreement.

After considering the pleadings, the testimony and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

1. Respondent, Gateway Financial Group, Inc. was dismissed from all liability;
2. With respect to Claimants' first investment of \$60,000.00 for 2,400 units of the limited partnership, this investment was suitable and Claimants are entitled to all dividends, returns of capital and other benefits of the limited partnership;
3. With respect to Claimants' second investment of \$40,000.00 for 1,600 units of the limited partnership, Respondents, Janney, Montgomery Scott, Inc. and Donald J. Settina, are jointly and severally liable to Claimants and shall repurchase the 1,600 units from Claimants at a price of Thirty Three Thousand Seven Hundred Dollars and Eighty One Cents (\$33,700.81);
4. Thus, Respondents, Janney, Montgomery Scott, Inc. and Donald J. Settina, are jointly and severally liable and shall pay the Claimants Thirty Three Thousand Seven Hundred Dollars and Eighty One Cents. Claimant shall return to said Respondents the 1,600 units of the limited partnership;
5. The claim for punitive damages is denied;
6. The parties shall each bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

1. The NASD shall retain a non-refundable fee of \$150.00 which shall be deducted from the \$500.00 deposit previously made by the Claimants and the remaining \$350.00 shall be reimbursed to Claimants as stated below;

2. Respondents are jointly and severally assessed forum costs in the amount of \$2,000.00.. Said assessment shall be satisfied by reimbursing Claimants \$350.00 and by remitting to the NASD the balance of \$1,650.00.

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

Concurring Arbitrator Signature


Timothy D. Wasson

Date of Decision: 6 February 1991

DATED BY NASD
FEBRUARY 20, 1991