

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Jan Vigeant and )  
JAMI of Clearwater, Inc. )

Case No. 89-01740

Name of Respondent(s) )

Integrated Resources Equity Corp. )  
Mitchell V. Braun )

Heard before the members of the Arbitration Panel:

George S. Coit, Jr., Esq.

Public

Kjell W. Pettersen

Industry

James F. Turner, III

Public

REPRESENTATION

Claimants, Jan Vigeant ("Vigeant"), and JAMI of Clearwater, Inc. ("JAMI"), were represented by Jere M. Fishback, Esq., of Kleinfeld & Fishback. Respondents, Integrated Resources Equity Corp. ("Integrated"), was represented by Guy Burns, Esq. of Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A. and Mitchell V. Braun ("Braun"), was represented by Clifford Hunt of Riden, Earle & Kiefner, P.A.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 14, 1989. Claimants alleged that Respondents were liable for: violations of Chapter 517 of the Florida Statutes; violations of Rule 10b-5 of the Securities and Exchange Act of 1934; misrepresenting the safety and potential investment return of certain limited partnerships and of a certain franchise; breach of fiduciary duty; negligence; and purchasing, or inducing Claimants into purchasing, risky, non-income producing investments which were unsuitable for Claimants.

In Statements of Answer filed with the NASD, Inc. on April 17, 1990, Respondent, Integrated, denied liability and alleged that: Claimants sought investments that would provide high income and which would be tax sheltered; Vigeant was a knowledgeable and sophisticated investor; Braun never assumed control over the account nor did he exercise any discretion over the account; Vigeant remained responsible for all decisions relating to purchases in her account; and Claimants were suitable for the investments.

In a Statement of Answer filed with the NASD on June 7, 1990, Respondent, Braun, denied all allegations of wrongdoing and alleged that: the franchise is not a security; Braun should not be held liable for the failure of Claimants' business endeavors since he had nothing to do with the management of the franchise; Braun received no remuneration from the purchase by Claimants of the franchise; Claimants did not rely on any statements by Braun in making their investment decision, and the account was not discretionary.

Respondent, Braun, alleged the affirmative defenses of: lack of consideration; lack of proximate cause; assumption of risk; estoppel; ratification and acquiescence; lack of intent to defraud; Claimants' lack of due diligence; intervening causes; failure to mitigate damages; Claimants' lack of due care and lack of reliance; contributory or comparative negligence; and laches.

#### RELIEF REQUESTED

Claimants requested damages of \$114,493.49, plus interest and a determination that Claimants are entitled to receive attorney's fees.

Respondents requested dismissal of the claim.

#### AWARD

On May 13, 14 and 15, 1991, in Tampa, Florida, during a hearing lasting six (6) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, on April 13, 1989, and signed by Mark Quinn on behalf of Respondent, Integrated, on April 16, 1990, and by Respondent, Braun, on April 11, 1990.

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.

1. 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.
2. Respondent, Braun, is found liable and shall pay to the Claimants the amount of \$70,000.00 inclusive of interest.
3. Respondents, Integrated and Braun, are also found liable, jointly and severally, and shall pay to the Claimants the further amount of \$20,000.00, inclusive of interest.

4. Respondents, Integrated and Braun, are also found liable to Claimants for attorney's fees pursuant to Section 517.211, of the Florida Statute. Based upon the request of the parties, this Panel has deferred ruling on the amount of such attorney's fees and leaves said ruling to the sound discretion of the appropriate court.

FORUM FEES

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,500.00 (6 sessions x \$750.00 per session). Claimants are hereby assessed \$750.00 for which the NASD shall retain the \$750.00, previously deposited in full satisfaction thereof. Respondent, Integrated, is hereby assessed \$3,750.00, payable to the National Association of Securities Dealers, Inc.

6. The Parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

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

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/  
George S. Coit, Jr., Esq.

/s/  
Kjell W. Petterson

/s/  
James F. Turner, III

Date of Decision: June 7, 1991