

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Bernard & Margaret Balona

CASE #89-02606

Name of Respondent(s)

Allied Capital Group, Inc.
Willard (Rick) McGaffick

Heard before the Arbitrator:

John P. Cullen, Esq.

CASE SUMMARY

This claim was filed with the National Association of Securities, Inc. (NASD) on September 18, 1989. The hearing was conducted in Tampa, Florida on October 17, 1990, with a total of one session.

Claimants, Bernard and Margaret Balona ("the Balona's"), alleged that Respondents, Allied Capital Group, Inc. ("Allied") and Willard McGaffick ("McGaffick"), were liable for: fraud and misrepresentation; negligence; breach of fiduciary duty; and violations of Section 517.301 of the Florida Statutes. Claimants alleged that Respondents misrepresented, among other things, the expected return on investment of certain stock.

Respondents failed to file an Answer and did not appear at the hearing to defend.

RELIEF REQUESTED

Claimants requested damages in the amount of \$17,270.00, plus interest, punitive damages, costs, and attorney's fees.

Respondents failed to file answers and did not appear at the hearing to defend.

AWARD

On October 17, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on January 20, 1990 and not signed by Respondents, Allied and McGaffick, as required pursuant to the NASD Code of Arbitration Procedure, Respondent, Allied, being an NASD member firm and Respondent, McGaffick, being a person associated with an NASD member firm, Allied Capital Group, Inc., at the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing and Respondents, Allied and McGaffick, neither appearing at the hearing nor requesting any adjournment thereof, this arbitrator has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Allied and McGaffick, are found liable, jointly and severally, on all counts, and shall pay to the Claimants the amount of Seventeen Thousand Three Hundred Ninety Three and 26/100 (17,393.26) Dollars, plus prejudgment interest in the amount of Four Thousand Three Hundred Fifty One and 64/100 (\$4,351.64) Dollars for a total due to the Claimants of Twenty One Thousand Seven Hundred Forty Four and 90/100 (21,744.90) Dollars.
2. Respondents, Allied and McGaffick, are also found liable, jointly and severally, and shall pay to the Claimants the further amount of Seven Thousand Two Hundred Forty Eight and 30/100 (\$7,248.30) Dollars for attorney's fees pursuant to Section 517.211, Florida Statutes.
3. Respondents, Allied and McGaffick are also found liable, jointly and severally, and shall pay to the Claimants the further amount of Ten Thousand and 00/100 (\$10,000.00) Dollars for punitive damages.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars (1 session x \$400.00). Respondents, Allied and McGaffick, are hereby assessed Four Hundred and 00/100 (\$400.00) Dollars, jointly and severally, payable directly to the Claimants as a return of their filing fees. The NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimants in full satisfaction of such forum fees.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

1. Jurisdiction exists pursuant to Sections 12 and 13 of the NASD Code of Arbitration Procedure and pursuant to the form U-4 executed by Respondent, McGaffick.

2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this arbitrator finds service upon and adequate notice to Respondents, Allied and McGaffick. The NASD has made every attempt to locate and serve Respondents, Allied and McGaffick, with Notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

ARBITRATOR CONCURRING



John P. Cullen, Esq.

Dated: November 5, 1990