

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Wot P 845-826-735

In the Matter of the Arbitration Among

George and Mary Cicero,
Giuseppe and Silvana Cicero,
Carmine and Rose Danio,
John J. and Gloria Dolmat

Claimants

vs.

AWARD
#90-01053

Emanuel and Company,
Eric Emanuel,
Neal Scott

Respondents

Heard before:

Michael J. Shalley
Richard H. Rosenblum
Barbara J. Glenns

Public Arbitrator
Public Arbitrator
Industry Arbitrator

CASE SUMMARY

Claimants, George and Mary Cicero ("GMC"), Giuseppe and Silvana Cicero ("GSC"), Carmine and Rose Danio ("CRD"), and John and Gloria Dolmat ("JGD"), alleged that Respondents, Emanuel and Company ("EAC"), Eric Emanuel ("EE"), and Neal Scott ("NS"), in connection with the offering and sale of the interests in real estate limited partnerships, violated Section 12(2) of the Securities Act of 1933. Claimants asserted Respondents violated Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 as well. Claimants stated Respondents did not conduct a reasonable investigation (as underwriters) to determine whether all material facts concerning the offerings were adequately and accurately disclosed. Claimants contended Respondents violated Article 3, Section 2 of the NASD Rules of Fair Practice ("suitability rules"), NASD Rule 405 ("know your customer rule"), and breached their fiduciary duty to Claimants. Claimants averred Respondents EAC and EE failed to supervise Respondent NS and failed to supervise the offering and sale of the real estate limited partnership interests to Claimants. Finally, Claimants alleged the offering and sale of the real estate limited partnership interests to Claimants generated excessive commissions to Respondents and that Respondents altered

subscriber documents and forged promissory notes.

Respondents denied any violation of Section 12(2) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. Respondents denied they were underwriters of the real estate partnerships and stated they had conducted all reasonable and prudent investigations needed. Respondents denied any violation of Article 3, Section 2 of the NASD Rules of Fair Practice and of NASD Rule 405. Respondents stated Claimants were not unsophisticated investors. Respondents denied they breached any duty of trust, confidence, care or loyalty. Respondents EAC and EE denied they failed to supervise Respondent NS or failed to supervise the offering and sale of the limited partnerships. Respondents denied that Claimants were entitled to any relief on their respective notes, nor damages of any kind.

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$500,000.00, interest, punitive or exemplary damages, costs and attorneys' fees.

Respondents requested the Statement of Claim be denied in its entirety.

AWARD

On November 28, 1990, January 22 & 23, 1991, January 29, 1991 and March 15, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimants, George and Mary Cicero, Giuseppe and Silvana Cicero, Carmine and Rose Danio, and John J. and Gloria Dolmat on March 16, 1990, March 21, 1990, March 27, 1990, and March 27, 1990, respectively and by Respondents, Emanuel and Company, Eric Emanuel and Neal Scott on May 23, 1990, May 23, 1990 and May 23, 1990, respectively. The hearings were held in New York City at the NASD, Inc. and consisted of ten (10) sessions. The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearings, has determined in full and final resolution of the issues submitted for determination as follows:

- 1- All claims against Respondent, Eric Emanuel, are dismissed;
- 2- Respondent, Neal Scott, is hereby liable and shall pay to the Claimants, George and Mary Cicero, the amount of \$25,114.19 plus interest at the rate of nine (9%) percent from the date of this Award until the date of payment;
- 3- Respondent, Neal Scott, is hereby liable and shall pay to the Claimants, Giuseppe and Silvana Cicero, the amount of \$25,114.19

plus interest at the rate of nine (9%) percent from the date of this

Award until the date of payment;

4- The Statement of Claim by the Claimants, Carmine and Rose Danio, hereby is dismissed in all respects;

5- All claims for punitive damages are dismissed;

6- All claims for exemplary damages are dismissed;

7- All claims for transcript fees are dismissed;

8- Recision is awarded concerning the transactions at issue of John J. and Gloria Dolmat. The amount of \$33,871.50 with interest at nine (9%) percent from the date of the last hearing constituting monies already paid and expenses incurred are to be paid to Claimants immediately. The Dolmats must also transfer their partnership interests and claims in bankruptcy as follows: In consideration of the award of damages in the amounts shown above, the Dolmats will transfer their limited partnership interests to the Respondents and will assign their claims in bankruptcy to Respondents. The Dolmats will sign and deliver such documents as may be necessary to effectuate the assignment of claims in bankruptcy and the filing of those assignments in the Bankruptcy Court, or the recision is denied. The Respondents, Neal Scott and Emanuel and Company, jointly and severally, must pay any remaining amounts due and interest to the banks on the note(s) signed by the Dolmats in this investment. In the event the Dolmats do not comply with the foregoing transfer procedures, the Award is limited to \$33,871.50;

9- The parties shall each bear their respective costs, including attorneys' fees;

10- Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimants;

11- Respondent Emanuel and Company is assessed forum fees in the amount of \$7,500.00 payable to the NASD, Inc. in accordance with Section 43 of the Code of Arbitration Procedure.

ARBITRATOR SIGNATURES

/s/

Michael J. Shalley

/s/

Richard H. Rosenblum

/s/

Barbara J. Glenns

April 17, 1991