

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Max A. & Josephine A. Gewalt

90-01869

and

FS Group Advisory Inc. a/k/a Consulting,
Joseph A. Ballarino, and
Financial Network Investment Corporation

REPRESENTATION

Claimants Max A. and Josephine A. Gewalt were represented by Stephanie W. Karwit, Esq. of Lamet, Karwit & Davis, Chicago, Illinois. Respondents FS Group Advisory Inc. a/k/a Consulting, Joseph Ballarino, and Financial Network Investment Corporation were represented by Tim R. Conway, Esq. and Daniel A. Kaufman, Esq. of Greenberger, Krauss & Jacobs, Chicago, Illinois.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about July 19, 1990, Claimants Max A. and Josephine A. Gewalt ("Gewalts") alleged that Respondents FS Group Advisory, Inc. ("FS Group"), Joseph Ballarino ("Ballarino"), and Financial Network Investment Corporation ("Financial") were responsible for and negligent in advising the Gewalts to invest exclusively in illiquid, speculative limited partnerships. The Gewalts allege that the following investments were unsuitable for their financial situation: (1) \$9250.00 in Denson Institutional Oil and Gas Properties; (2) \$6000.00 in Consolidated Capital Institutional Properties; (3) \$35,000.00 in Dalwest Investors, Ltd.; and (4) \$16,000.00 in Presidential Mortgage Company.

The Gewalts allege that they told Respondent Ballarino that they (Gewalts) did not want to speculate or enter into risky investments and that they (Gewalts) were relying on his (Ballarino's) judgment for suitable and safe investment opportunities. Gewalts alleged that in the Fall of 1988, when they wanted to liquidate some of their investments, Ballarino told Gewalts for the first time that they could not liquidate their investments and that many of their investments were in serious financial trouble.

In a Statement of Answer filed with the NASD by Respondents Ballarino, FS Group, and Financial, on or about September 20, 1990, Respondents denied that they advised the Gewalts unsuitable investments and also denied that they were negligent in their advisements. Respondents alleged that the Prospectus from the investments contained language which stated that, THESE ARE SPECULATIVE SECURITIES and that the Gewalts were aware of the language. Respondents also alleged that they advised the investments in issue as one of numerous financial alternatives which the Gewalts could have chosen from.

Among a few of the affirmative defenses, Respondents alleged that the Gewalts were responsible for their own investment decisions as they were fully informed and therefore were contributorily negligent. Respondents also alleged that the Gewalts expressly agreed in the on-going Services Agreement that Respondents would not be liable in connection with the performance of the services provided in the Agreement as long as the services were rendered in good faith.

RELIEF REQUESTED

Claimants Max and Josephine Gewalt requested damages of \$75,750.00 which includes the cost of their investment (\$66,250.00) plus a refund from the Respondents for investment advisory fees (\$9500.00). Claimants also requested that they be refunded the \$650.00 Arbitration Fee and that costs and reasonable attorney fees be assessed against Respondents. Respondents Ballarino, Financial Network and FS Advisory requested that the statement of claim be dismissed with prejudice and that Respondents be awarded their costs and any other relief just and proper.

OTHER ISSUES

Claimants Max and Josephine Gewalt submitted an Amended Statement of Claim which the Respondents objected to; the arbitration panel decided to strike the Amended Statement of Claim and to exclude testimony related to any transactions that occurred six (6) years prior to the filing of the original Statement of Claim.

PROCEDURAL MATTERS

On July 26, 1991 in Chicago, Illinois during a hearing lasting a total of 2 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on or about June 26, 1990 by Claimants Max and Josephine Gewalt on or about September 19, by Joseph Ballarino on behalf of Respondent FS Advisory Group, Inc. and on or about September 19, 1990 by Respondent Joseph A. Ballarino and on or about August 13, 1990 by Miles Z. Gordon, President, on behalf of Respondent Financial Network Investment Corporation.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may 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.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Motion To Dismiss the claim on the basis of Section 15 of the Code of Arbitration is denied;
2. Claimants Gewalts will be awarded \$9500.00 against Respondent Joseph Ballarino only; therefore Joseph Ballarino is liable for and shall pay to the Gewalts the Sum of Ninety Five Hundred (\$9500.00) Dollars and No Cents.
3. Each party shall bear their own costs and expenses.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$650.00 previously deposited with the NASD by the Claimant Max and Josephine Gewalt.

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

ARBITRATION PANEL

DATED:

July 26, 1991	S/S Kenneth C. Prince, Esq. Public Arbitrator
July 26, 1991	S/S Peter C. Quigley, Esq. Public Arbitrator
July 26, 1991	S/S Morgan F. McDonnell Industry Arbitrator