

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Allen and Michelle Gaggini
Lorraine Cowgar

91-02164

Name of Respondents

The Ohio Company
Dennis O'Brien

REPRESENTATION

For Claimants Allen & Michelle Gaggini and Lorraine Cowgar ("Claimants"): Anthony V. Trogan of Weisman Trogan et al.

For Respondents The Ohio Company ("Ohio") and Dennis O'Brien ("O'Brien"): James A. Francis of The Ohio Company.

CASE INFORMATION

Statement of Claim filed: July 11, 1991.

First Amended Statement of Claim: January 13, 1992.

Claimants' Submission Agreement signed on: July 11, 1991.

Joint Statement of Answer filed by Respondents on: September 6, 1991.

Joint Answer to the Claimants' First Amended Statement of Claim filed by Respondents on: January 22, 1992.

Respondent, Ohio's Submission Agreement signed on: September 6, 1991.

Respondent, O'Brien's Submission Agreement signed on: July 23, 1991.

HEARING INFORMATION

Pre-Hearing Conference: January 21, 1992/1 pre-hearing session/1 arbitrator.

Hearing Date/Sessions: February 6, 1992/3 sessions.

Hearing Location: Southfield, MI.

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CASE SUMMARY

Claimants alleged Respondents violated the NASD Rules of Fair Practice; the NYSE "Know Your Customer Rule"; defrauded Claimants; violated Michigan State Securities Laws; breached the fiduciary duty they owed to Claimants regarding Claimants' investments in Pickett Suite Hotel Master L.P.I.; alleged that O'Brien was not registered to sell securities in the state of Michigan; and that Respondents' actions formed the basis for the elements of a RICO claim.

Respondents alleged Claimants Gaggini received a prospectus on Pickett Suite Hotel Master L.P.I.; met the suitability standards for the investments; no misrepresentations were made; RICO, exemplary and punitive damages were inappropriate in this matter; Claimants did not mitigate their damages; and that O'Brien was appropriately registered to sell securities in the State of Michigan at all times.

RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$20,000.00; interest at twelve (12%) percent from July 1987; costs in the amount of \$650.00; attorneys' fees; exemplary and punitive damages; RICO damages; and rescission of the subject transactions.

Respondents requested: Claimants' statement of Claim and Amended Statement of Claim be denied; forum costs; and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

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

- 1- Respondents are liable, jointly and severally, and shall pay Claimants Gagginis the sum of SIX THOUSAND THREE HUNDRED EIGHTY SEVEN 00/100 DOLLARS (\$6,387.00) inclusive of interest;
- 2- Respondents are liable, jointly and severally, and shall pay

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Claimant Cowgar the sum of TEN THOUSAND 00/100 DOLLARS (\$10,000.00) inclusive of interest;

3- Claimants' claims of exemplary, punitive and RICO damages are denied as is their request for rescission;

4- Claimants shall assign all rights in the Pickett Suite Hotel Master L.P.I to Respondents.

OTHER COSTS

1- Respondents shall pay, jointly and severally, to Claimants Gagginis the sum of TWO THOUSAND ONE HUNDRED TWENTY NINE 00/100 DOLLARS (\$2,129.00) to represent attorneys' fees. Respondents shall pay, jointly and severally, to Claimant Cowgar the sum of THREE THOUSAND THREE HUNDRED THIRTY THREE 00/100 DOLLARS (\$3,333.00) to represent attorneys' fees.

a- attorneys' fees are based upon reliance of MCLA 451.810(a); and Prince v. Heritage, 109 Mich App 289 (1981).

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 non-refundable filing fee previously deposited by Claimants and the following Forum Fees are assessed.

1 pre-hearing session X \$300.00 = \$300.00 due.

3 sessions X \$300.00 = \$900.00 minus hearing session deposit of \$300.00 = net \$600.00 due.

Forum fees Assessed Against:

1- Respondents, jointly and severally, in the amount of \$900.00. Respondents, jointly and severally, shall also reimburse Claimants, the sum of \$300.00 to represent the hearing session deposit and \$100.00 to represent the non-refundable filing fee.

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

Arbitrator's Signature



Ralph Joseph Strlin/Public Arbitrator

Date: March 12, 1992