

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
Bermont Partners)	
)	Case No. 91-02669
<u>Name of Respondent(s)</u>)	
)	
Gilford Securities Incorporated)	
H. Robert Holmes)	
Gilbrooke Associates, Inc.)	
Lennox Securities, Inc.)	
)	

REPRESENTATION

For Claimant, Bermont Partners ("Bermont"): Curtis Carlson, Esq. of Carlson Bales & Schwed, P.A.

For Respondents, Gilford Securities Incorporated ("Gilford") and H. Robert Holmes ("Holmes"): Kenneth R. Hartmann, Esq. and Harley S. Tropin, Esq. of Kozyak Tropin Throckmorton et al.

For Respondents, Gilbrooke Associates, Inc. ("Gilbrooke") and Lennox Securities, Inc. ("Lennox"): see Other Issues.

CASE INFORMATION

Statement of Claim filed: August 27, 1991. Claimant's Submission Agreement signed: October 2, 1991.

Respondent, Holmes', Statement of Answer filed: December 26, 1991 and Submission Agreement signed: January 6, 1993. Respondent, Gilford's, Statement of Answer filed: December 9, 1991 and Submission Agreement signed by Mitchell Kopin, on behalf of Gilford, on January 6, 1993.

HEARING INFORMATION

On November 16, 1992, in Fort Lauderdale, Florida, a Pre-Hearing Conference lasting one session was conducted via telephone conference call with two arbitrators.

On January 6 and 7, 1993, in Fort Lauderdale, Florida, hearings lasting four sessions were conducted.

CASE SUMMARY

Claimant alleged that it invested \$500,000.00 in Gilford Partners, a Limited Partnership, because it was a short selling fund; that Respondents, through Holmes, made misrepresentations of and omitted to state material facts; failed to manage the fund as promised; refused to permit Claimant to withdraw from the fund early although it permitted others to do so; and, that Respondents' actions constituted fraud, breach of fiduciary duty and negligence.

In separate Answers, Respondents, Holmes and Gilford, denied all allegations of wrongdoing and alleged that all material facts and all risks were fully disclosed; that Claimant represented it was an accredited investor and had read and understood the Private Placement Memorandum; that Claimant signed a 23 page Agreement of Limited Partnership that clearly stated when they could exit the fund; and, that the claims against Holmes and Gilford are not proper for NASD arbitration.

Holmes and Gilford alleged the affirmative defenses of lack of jurisdiction; failure to state a claim; and, no set of facts upon which Claimant can fashion a proper claim. Gilford further alleged that there is no basis upon which Claimant can allege a claim against Gilford.

RELIEF REQUESTED

Claimant requested damages in the amount of \$320,680.00.

Respondents requested dismissal.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondents, Gilbrooke and Lennox, were removed as parties prior to the hearing of this matter by the NASD. This Panel made no determination of liability regarding those removed parties.
2. 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

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

1. Respondents, Gilford and Holmes, are found not liable and, therefore, all claims against them are hereby dismissed.

2. Respondents' request for attorney's fees pursuant to Section 57.105, Florida Statutes, is denied.

OTHER COSTS

1. Respondents shall pay to the Claimant the amount of \$1,000.00 as previously ordered by the Panel, as sanctions for discovery violations.
2. Claimant shall pay \$15.00 in administrative costs for post-hearing copying charges (of Exhibits 37, 38 and 39) to the National Association of Securities Dealers, Inc.
3. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,750.00 (five sessions x \$750.00).
2. Claimant is hereby assessed \$1,875.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$1,125.00 payable to the National Association of Securities Dealers, Inc.
3. Respondents, Gilford and Holmes, are hereby assessed \$1,875.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

/s/
Stephen A. LeClair, Esq.

Public

/s/
John Darling

Industry

/s/
Daniel Goodrum

Public

Date of Decision: FEBRUARY 11, 1993