

## N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

Peter C. & Josephine G. Piraneo  
Lisa Anne Piraneo Gaughan

91-02815

Name of Respondents

DeRand Investment Corporation  
R. Douglas Peet  
Dan R. Kiely  
United Gibraltar Corp. Off Case  
Quetzal Corp. OFF CASE

REPRESENTATION

For Claimant: Andrew Barnes, Esq.

For Respondent DeRand Investment Corporation and R. Douglas Peet: Pamela A. Bresnahan and Annette Pries, Esq. of the law firm of Semmes, Bowen &amp; Semmes.

Respondent Dan R. Kiely appeared pro se.

CASE INFORMATION

Statement of Claim filed: September 10, 1991.

Claimants' Opposition to Motion to Dismiss filed on: February 18, 1992.

Claimants' Opposition to Respondents' Motion to Determine Arbitrability, To Decline Jurisdiction and for other relief filed on: February 25, 1992.

Claimants' Peter and Josephine Piraneo's Submission Agreements signed on: September 3, 1991.

Claimant Lisa Anne Piraneo Gaughan's Submission Agreement signed on: August 30, 1991.

Claimants' Brief filed on: March 27, 1992.

The Respondents DeRand Investment Corporation, Dan R. Kiely and R. Douglas Peet did not execute submission agreements as required pursuant to Section 25(b)(1) of the Code of Arbitration Procedure.

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Statement of Answer, Cross Claim and Third Party Claims of Respondents R. Douglas Peet and DeRand Investment Corporation filed on: December 4, 1991.

Motion to Dismiss and Request for Hearing on the Motion filed: February 12, 1992.

Letter Statement of Answer filed by Respondent Dan R. Kiely on: January 21, 1992.

Motion to Determine Arbitrability, To Decline Jurisdiction, for a hearing and for Other Relief filed and Memorandum in Support filed.

Arbitration Brief filed on: March 18, 1992.

Respondents' Reply to Claimants' Opposition to Motion to Determine Arbitrability, To Decline Jurisdiction, and for Other Relief filed on: March 9, 1992.

#### HEARING INFORMATION

Hearing Dates/Sessions: March 19, 1992, 2 Sessions

Hearing Location: NASD offices located in Washington, DC.

#### CASE SUMMARY

Claimants alleged that Respondent R. Douglas Peet strongly recommended that Claimant invest in a promissory note from a businessman Dan R. Kiely he had done business with for 25 years and the note carried a 16% interest rate for a period of four years and strongly recommended Claimants to invest in another note which carried an 18% interest rate for six to nine months and stressed there was no risk. Claimants further alleged Respondents defaulted on the notes and alleged they were never informed the investment in the promissory notes were not researched, sponsored or offered by DeRand Investment Corporation or that Mr. Peet was acting in a private capacity or that Mr. Kiely was a former DeRand Investment Corporation employee, or that Mr. Kiely has a history of questionable financial dealings and alleged Respondents made numerous other misrepresentations and omissions concerning the investments.

Respondents DeRand Investment Corporation and R. Douglas Peet maintained the transactions were discussed with Claimants thoroughly on several occasions and Claimants requested that they participate and Claimants were advised of the risks and were offered alternatives to the investments complained of. Respondents R. Douglas Peet and DeRand Investment Corporation further maintained Claimant Josephine Piraneo was a sophisticated investor who wanted investments with a high rate of return and she selected these investments after full disclosure. Respondents R. Douglas Peet and DeRand Investment

Corporation filed a third party claim which was served by the NASD on a voluntary basis and those parties declined jurisdiction and a cross-claim against Dan Kiely alleging damages, if any, are due solely to the negligence and conduct of Dan R. Kiely. Respondents R. Douglas Peet and DeRand Investment Corporation filed a motion to dismiss alleging in order to achieve a fair and just adjudication of the merits of the claim, Dan R. Kiely and the third parties they asserted claims against should be joined as parties and cannot be as the NASD does not have jurisdiction over them alleging Dan R. Kiely is not and never has been a licensed registered representative and has not been employed in the securities business and he is not and never has been an officer, director or employee of DeRand Investment Corporation or of any other registered broker/dealer or member of the NASD. Respondents R. Douglas Peet and DeRand Investment Corporation further maintained the transactions effectuated by Respondent R. Douglas Peet were not "securities" within the meaning of the NASD Private Securities Transaction Rules and Claimants are not entitled to punitive damages under the federal securities laws and/or under Virginia law as no malice or intentional recklessness or negligence rising to the level necessary for punitive damages has been shown.

In response, Claimants maintained Mr. Peet was acting in his capacity as a registered representative of DeRand Investment Corporation and the investment was a private securities transaction made in a manner that was inconsistent with the requirements of Article III, Section 40 (the Private Securities Transactions Rule) of the NASD Rules of Fair Practice. Claimants further maintained if Respondent Dan R. Kiely is in bankruptcy and the third parties Respondents DeRand Investment Corporation and R. Douglas Peet wished to bring in are judgement proof they can hardly be necessary parties. Claimants further maintained at the time of the two sales to Claimants, Dan R. Kiely was an associated person of DeRand Investment Corporation and functioned for a number of years as an Officer, Employee and Shareholder of the DeRand holding company and he is an individual associated with the broker/dealer so NASD should rule there exists jurisdiction over this individual.

Respondent Dan R. Kiely maintained he has never been licensed as a registered representative; has never been an officer or director of any broker/dealer; any association with DeRand Investment Corporation was ended prior to the events in question and therefore, the NASD does not have jurisdiction over him and all claims against him should be dismissed.

#### RELIEF REQUESTED

Claimants requested damages of \$57,350.00 plus all interest and late fees due on the notes to date of arbitration; plus the arbitration fees, attorneys fees of \$20,000.00; reimbursement of all expenses incurred and punitive damages in the sum of \$25,000.00 and that Respondents DeRand Investment Corporation and R. Douglas Peet motions be denied in their entirety.

Respondents R. Douglas Peet and DeRand Investment Corporation requested that the arbitrators grant their motions to dismiss and to decline jurisdiction in this matter; a dismissal of Claimant's Statement of Claim and if damages are found that Respondent Dan R. Kiely indemnify the Respondents R. Douglas Peet and DeRand Investment Corporation for any and all sums which may be adjudged against them.

Respondent Dan R. Kiely requested a dismissal of all claims against him.

**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. Prior to the commencement of the first hearing session the arbitration panel ruled that Respondents' Motions to Dismiss were denied.
2. The NASD has jurisdiction over Respondents DeRand Investment Corporation, R. Douglas Peet and Dan R. Kiely.
3. The Respondents De Rand Investment Corporation, R. Douglas Peet and Dan R. Kiely are liable jointly and severally and shall pay to the Claimants the sum of \$70,796.53 inclusive of interest and the notes at issue presently in the possession of the Claimants shall be turned over to the Respondents upon payment in full of this Award.
4. All claims by all other parties be and hereby are denied in all respects.
5. The Claimants' request for punitive damages is denied.
6. Each party shall bear their respective costs including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

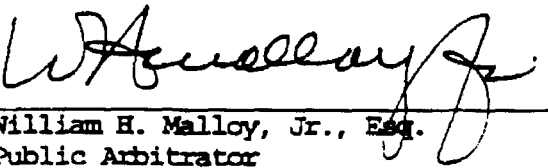
2 sessions X \$500.00 = \$1,000.00 minus hearing session  
deposit of \$500.00 = net \$500.00 due.

The Claimants be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$125.00 to represent forum fees and the Respondent DeRand Investment Corporation be and hereby is liable shall pay to the NASD the sum of \$125.00 to represent forum fees and the Respondent Dan R. Kiely be and hereby is liable and shall pay to the NASD the sum of \$125.00 to represent forum fees and the Respondent R. Douglas Peet be and hereby is liable and shall pay to the NASD the sum of \$125.00 to represent forum fees.

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

ARBITRATOR SIGNATURE

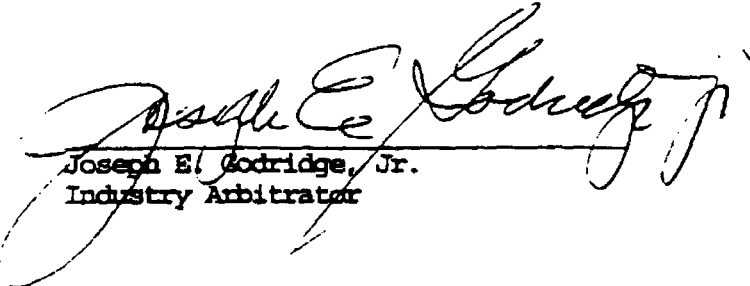
  
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William H. Malloy, Jr., Esq.  
Public Arbitrator

Date of Decision: June 30, 1992

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ARBITRATOR SIGNATURE



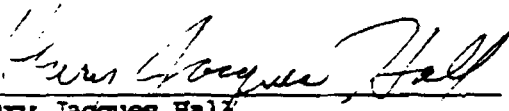
Joseph E. Godridge, Jr.  
Industry Arbitrator

Date of Decision: June 30, 1992

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ARBITRATOR SIGNATURE

  
Henry Jacques Hall  
Public Arbitrator

Date of Decision: June 30, 1992