

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Donald R. & Dorianne Mitchell

and

92-02243

Name of Respondents

Consolidated Investment Services, Inc.
Norman P. Rounds, Randy Romero and
Ronald D. Smits

REPRESENTATION OF PARTIES

Claimants were represented by William D. Nelson, Esq. of Robinson, Waters, O'Dorosio and Rapson, Denver, Colorado.

Respondents Consolidated Investment Services, Inc. and Norman P. Rounds were represented by Shaun T. Gloude, Esq., Littleton, Colorado and Martin R. Berliner, Esq. of Berliner Kaplan Zisser & Walter, P.C., Denver, Colorado.

Respondent Ronald D. Smits appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on or about July 8, 1992. Submission Agreement of Claimants Donald R. & Dorianne Mitchell was signed on June 30, 1992.

Statement of Answer was filed by Respondents Consolidated Investment Services, Inc. and Norman P. Rounds on or about August 24, 1992. Amended Answer of Respondents Consolidated Investment Services, Inc. and Norman P. Rounds was filed on or about February 1, 1993. Second Amended Answer of Respondents Consolidated Investment Services, Inc. and Norman P. Rounds was filed on or about February 4, 1993. Submission Agreement of Respondent Consolidated Investment Services, Inc. was signed on September 22, 1992 by Norman P. Rounds. Submission Agreement of Norman P. Rounds was signed on September 22, 1993.

Statement of Answer of Respondent Ronald D. Smits was filed on or about February 19, 1993.

HEARING INFORMATION

A pre-hearing conference was held on Friday, February 5, 1993, John Fleming Kelly, Esq., presiding.

The hearing was held on Monday, February 22, 1993 for two (2) sessions and Tuesday, February 23, 1993 for two (2) sessions in Denver, Colorado for a total of one (1) pre-hearing and four (4) hearing sessions.

CASE SUMMARY

Claimants alleged that Respondent Ronald D. Smits ("Smits") provided investment advisory services and induced the Claimants to make unsuitable and inappropriate securities purchases given their investment objectives, limited investment experience, economic needs and risk tolerance. The Claimants invested in various limited partnerships and stock, specifically: RMR Diamond Limited Partnership, Ponderosa Park, Ltd., Yukon Reserve Partners, Ltd, Capital Resource Fund I, Ltd, and Colorado Financial Planning, Inc. stock. Claimants further alleged that CIS and Norman Rounds as the compliance officer and the principal designated to supervise the activities of the office where Smits and Randy Romero were located, had the duty to supervise their activities. It was specifically alleged that the actions of Smits as a registered representative of Consolidated Investment Services, Inc. constituted breach of fiduciary duty, fraud, and violations of the Colorado Securities Act.

Respondents Consolidated Investment Services, Inc. ("CIS") and Norman P. Rounds ("Respondents") denied the allegations of wrongdoing set forth in the Statement of Claim. Respondents stated that if Claimants invested in RMR Diamond Limited Partnership or Yukon Reserve Partners, Ltd. that such investments were made in the secondary market and that they had no knowledge of such investments. Respondents further stated that the investments in Colorado Financial Planning, Inc. were made through Respondents Randy Romero and Ronald Smits acting on their own behalf and not as agents of CIS. Respondents asserted affirmative defenses including but not limited to the following: the Statement of Claim fails to set forth a claim upon which relief can be granted; assumption of the risk; failure to plead fraud with the required particularity; failure to mitigate; and Claimants are entitled to assert a private right of action for failure to supervise.

Respondent Ronald D. Smits ("Smits") also denied the allegations set forth in the Statement of Claim. Smits stated that his training was limited to product-oriented marketing skills and that he was never provided training or guidance in legal requirements, concepts of risk, liquidity or suitability. Smits further stated that he never knowingly concealed any information from the claimants and that he provided the claimants with all of the information that he was provided by Randy Romero or Colorado Financial Planning, Inc. The following affirmative defenses were asserted by Respondent Smits: the claims are barred by the applicable statutes of limitation; any liability to the claimants was solely due to the acts or omissions of persons or entities over which

he had no control; and any liability of Smits has been discharged in bankruptcy.

RELIEF REQUESTED

Claimants requested an award in their favor against Respondents, jointly and severally in the amount of \$39,000.00 together with statutory interest thereon, costs and reasonable attorney's fees as provided in C.R.S. Sec. 11-51-125(2) and (3) and appropriate exemplary damages.

Respondents Consolidated Investment Services, Inc. and Norman P. Rounds requested that the Statement of Claim be dismissed as to them and for such other relief as the panel may deem warranted.

Respondent Ronald D. Smits requested that the claims asserted against him be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the panel could not determine that Respondent Randy Romero had been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also could not determine that Respondent Randy Romero had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondent Ronald D. Smits did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

AWARD

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

1. Respondent Ronald D. Smits shall be and hereby is liable for and shall pay to the Claimants Donald R. and Dorianne Mitchell the sum of \$20,000.00 (twenty thousand dollars) plus attorney's fees and costs in the amount of \$13,000.00 (thirteen thousand dollars) and interest in the amount of \$8,000.00 (eight thousand dollars).

2. Respondent Consolidated Investment Services, Inc. shall be and hereby is liable for and shall pay to the Claimants Donald R. and Dorianne Mitchell the sum of \$10,000.00 (ten thousand dollars) plus attorney's fees and costs in the amount of \$6,569.00 (six thousand five hundred sixty nine dollars) and interest in the amount of \$4,000.00 (four thousand dollars).

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$120.00 and shall retain as forum fees the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimants. Respondent Consolidated Investment Services, Inc. shall pay to the N.A.S.D. the sum of \$500.00 and Respondent Ronald D. Smits shall pay to the N.A.S.D. the sum of \$1,000.00 as forum fees.

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300.00 for each prehearing conference, if any.

The NASD shall retain postponement fees in the amount of \$400.00 previously deposited with the NASD by the Respondent Consolidated Investment Services, Inc. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Reid A. Godbolt, Esq.
Reid A. Godbolt, Esq.
Public Arbitrator, Presiding Chair

March 11, 1993

s/ John Fleming Kelly, Esq.
John Fleming Kelly, Esq.
Public Arbitrator

March 12, 1993

s/ Eugene M. Osman
Eugene M. Osman
Industry Arbitrator

March 11, 1993