

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Regan Insurance Company  
Deferred Compensation Plan

Case No. 92-03265

Name of Respondent(s)

Securities Service Network Inc.  
Gustav J. Mallas

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**REPRESENTATION**

For Claimant, Regan Insurance Company Deferred Compensation Plan ("the Regan Plan"): Leonard Samuels, Esq. of Berger & Shapiro, P.A.

For Respondent, Securities Service Network, Inc. ("SSN"): John Golwen, Esq. of Martin Tate Morrow & Marston.

Respondent, Gustav J. Mallas ("Mallas"): *pro se*.

**CASE INFORMATION**

Statement of Claim filed: September 25, 1992 and amended May 17, 1993.  
Claimant's Submission Agreement signed: October 16, 1992 by Robert and Charlen Regan on behalf of The Regan Plan.

Respondent, SSN's, Statement of Answer and Counterclaim filed: December 14, 1992. Respondent, SSN's, Submission Agreement signed: December 9, 1992 by Steven Coffey on behalf of SSN.

Respondent, Mallas', Statement of Answer filed: November 23, 1992 and amended April 2, 1993. Respondent, Mallas', Submission Agreement signed: November 17, 1992.

Claimant's Reply to the Counterclaims filed: January 4, 1993.

Respondent, Mallas, filed a Reply to Claimant's Response to his Counterclaim on January 11, 1993.

Respondent, SSN, filed a Reply to Claimant's Response to their Counterclaim on January 7, 1993.

### **HEARING INFORMATION**

On September 17, 1993, in Fort Lauderdale, Florida, a pre-hearing conference lasting one session was conducted via telephone conference call with the arbitrators.

On September 22 and 23, 1993, in Fort Lauderdale, Florida, hearings lasting four sessions were conducted.

### **CASE SUMMARY**

Claimant alleged that: Respondents were liable for: fraud; negligence and breach of fiduciary duty. Claimant alleged that Mallas recommended that Claimant invest in a certain general partnership which was unsuitable in light of Claimant's investment objectives; and, that Mallas misrepresented the nature of the investment.

Respondent, SSN, denied all allegations of wrongdoing and alleged that: Mallas was an independent contractor. Respondent, SSN, asserted affirmative defenses including failure to state a claim; statute of limitations; laches; contributory or comparative proximate cause; unclean hands; in pari delicto; failure to mitigate damages; Mallas' actions were outside the scope of his employment; good faith; reasonable care; waiver; and, estoppel.

Respondent, SSN, asserted a Counterclaim for breach of contract against Claimant for Claimant's failure to comply with its obligations to take responsibility in preventing unauthorized acts by reviewing all documents and not relying on information not contained in the prospectus.

Respondent, Malls, denied all allegations of wrongdoing and alleged that: he preformed in an honest manner and never provided any false statements; Claimant performed its own due diligence; Claimant did not demand that the investments be rescinded prior to this Claim; and, any loss is due to Claimant's own actions.

Respondent, Malls, asserted a Counterclaim against Claimant alleging slander and defamation.

Claimant responded to the Counterclaims and alleged that the Counterclaim of SSN fails to state a cause of action and Mallas' contested Mallas' ability to bring a claim for slander based upon statements made in this proceeding.

### **RELIEF REQUESTED**

Claimant requested rescission and damages in the amount of \$50,000 plus costs, interest, attorney's fees, and punitive damages.

Respondent, SSN, requested dismissal of the claim and Counterclaimed for costs, attorney's fees, and unspecified damages.

Respondent, Mallas, requested dismissal of the Claim and Counterclaimed for unspecified damages plus costs and punitive damages.

### **OTHER ISSUES CONSIDERED & DECIDED**

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, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, SSN and Mallas, are found not liable and, therefore, all Claims against them are hereby dismissed.
2. Claimant's request for attorney's fees, costs, and punitive damages is denied.
3. Claimant/Counter Respondent, the Regan Plan, is found not liable to Mallas or SSN and, therefore, all Counterclaims against it are hereby dismissed.
4. Respondents' requests for costs, attorney's fees, and punitive damages are denied.

### **OTHER COSTS**

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 \$2,500 (one pre-hearing conference x \$500 plus four sessions x \$500 per session).

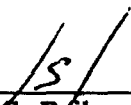
2. Respondent, Mallas, is hereby assessed \$2,500 payable to the National Association of Securities Dealers, Inc. for which the NASD shall retain the \$600 previously deposited by Mallas in partial satisfaction thereof, leaving a balance due the NASD of \$1,900.

3. The NASD shall retain the non-refundable filing fees of \$150 paid by Claimant and \$250 paid by Counterclaimant, SSN and \$250 paid by Counterclaimant, Mallas.

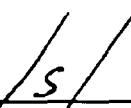
The NASD shall refund the session deposits of \$500 paid by Claimants and \$270 paid by Counterclaimant, SSN.

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

Concurring Arbitrators' Signatures

  
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Bradley S. Bailey, Esq.

Public

  
\_\_\_\_\_  
Marc S. Piven

Industry

  
\_\_\_\_\_  
Stuart I. Stern

Public

Date of Decision: 10/13/93