

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Sylvia Raffelson

Case No. 92-03601

Name of Respondents

Richard E. Garcia

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**REPRESENTATION**

For Claimant, Sylvia Raffelson ("Raffelson"): Charles D. Franken, Esq.

For Respondent, Richard E. Garcia ("Garcia"): Pro Se.

**CASE INFORMATION**

Statement of Claim filed: October 23, 1992. Claimant's Submission Agreement signed: October 13, 1992.

Respondent, Garcia's Statement of Answer filed: January 27, 1993. Respondent's Submission Agreement signed: January 26, 1993.

**HEARING INFORMATION**

On October 1, 1993, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

**CASE SUMMARY**

Claimant alleged that she wanted to increase her monthly income with sound financial recommendations without taking any risks of investment or to depreciate her capital as capital preservation was of paramount importance to her; that Claimant was not knowledgeable about making investments and left the recommendations to her broker; that Respondent agreed that any investments recommended for Claimant would be made for the purpose of maximizing income without putting any of the capital at risk; that in contrast to Respondents representations, Respondent purchased an investment in a limited partnership for

Claimant which was unsuitable for Claimant's financial objectives; that the state of Colorado has commenced legal proceedings against the promoters of the limited partnerships for violations of Federal and State Securities Acts; that the value of Claimant's investment is worthless due to the fraudulent representations of the Respondents as well as the promoter; that Respondent's liability is premised upon breach of contract, violations of state securities laws, common law fraud, breach of fiduciary duty and negligence.

Respondents denied all allegations of wrongdoing and alleged that he did not solicit Claimant to make the investment; that Claimant was given a prospectus at the first meeting; that Claimant was not forced to purchase the investment; that the investment was suitable for Claimant; and, that Respondent did his due diligence and everything required by the NASD.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages of approximately \$11,000.00 plus attorneys' fees, expert witness fees, costs and expenses.

Respondent requested dismissal of the Claim.

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

1. On December 28, 1992 Claimant filed with the NASD, a Notice of Voluntary Dismissal As to Respondent, Bob Hedges Financial Services, Inc.
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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Garcia, is found liable and shall pay to the Claimant the amount of \$11,000,000 including interest.
2. Claimant's requests for attorney's fees, costs, expert fees and expenses are denied.

**OTHER COSTS**

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding including attorney's fees.

**FORUM FEES**

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800 (two sessions x \$400 per session).
2. Claimant is hereby assessed \$400 for which the NASD shall retain the \$400 previously deposited in full satisfaction thereof.
3. Respondent, Garcia, is hereby assessed \$400 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$100 paid by the Claimant.

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

Concurring Arbitrators' Signatures

/s/  
Gary M. Landau, Esq.

Public/Chairman

/s/  
Sergio O. Alvarez-Mena, III, Esq.

Industry/Panelist

/s/  
Jerrold Levine

Public/Panelist

Date of Decision: November 12, 1993