

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

John F. Cucchiara

92-03818

Name of Respondent(s)

Mutual Service Corp

REPRESENTATION

Claimant John F. Cucchiara was, pro se.

For Respondent: Jeffrey Cohen, Esq. of Stephens, Lynn, Klein & McNicholas.

CASE INFORMATION

Statement of Claim filed: 11/5/92.

Claimant's Submission Agreement signed on: 11/5/92.

Statement of Answer filed by Respondent, Mutual Service Corp. on: 1/18/93.
Respondent, Mutual Service Corp. Submission Agreement signed on: 12/2/92 by
Dennis Kaminski.

HEARING INFORMATION

On 8/6/93 a prehearing conference was held via telephone conference call with two arbitrators and, on 10/7/93 an in-person prehearing conference with the Chairman was held in Tampa, Fl. On January 3 and January 4, 1994 hearings lasting four (4) sessions were conducted in Tampa, Fl.

CASE SUMMARY

Claimant, alleged that Respondent through its employee Robin Chi, induced him to purchase unsuitable investments in limited partnerships by fraud, deceit and misrepresentation.

Respondent alleged that claimant was a sophisticated investor who is now seeking to have the respondent insure him for losses suffered on bad investment decisions. Respondent further alleged the affirmative defenses of: failure to state a claim; assumption of risk; waiver; laches; and, estoppel.

RELIEF REQUESTED

Claimant requested: damages in the amount of \$115,000 plus interest and costs.

Respondent requested: dismissal of the claim plus fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

1) The panel denied without prejudice the claimant's request to amend his claim to include a claim for losses sustained in his investment in Textainer Equipment Fund II. Claimant is free to bring a separate cause of action regarding that investment, should he choose to do so.

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:

Respondent is found liable and shall to pay to the claimant the amount of \$46,775.31 inclusive of interest.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$4,050. Forum fees were computed as follows:

4 hearing sessions at \$750 each	\$3,000
8/6/93 pre hearing conference @ \$750	\$ 750
10/7/93 pre hearing conference @ \$300	\$ 300

Total Forum Fees	\$4,050

- 1) Forum fees in the amount of \$4,050 are assessed against the Respondent \$750 of which shall be payable directly to the claimant as a refund of his hearing deposit and \$3,300 of which shall be payable directly to the National Association of Securities Dealers, Inc.
- 2) Respondent shall reimburse Claimant \$200 for the non-refundable filing fee paid by claimant.
- 3) The NASD shall retain the \$750 hearing deposit paid by claimant in partial satisfaction of the forum fees.

Concurring Arbitrators' Signatures

Name	Public/Industry
<u>/s/</u> Arthur R. Louv, Esq.	Public
<u>/s/</u> Sam A. Giunta	Public
<u>/s/</u> Jeffrey P. Julien	Industry

Date of Decision: February 7, 1994