

N.A.S.D. AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Gerald E. Patchen

vs.

NASD #93-01123

Name of Respondents

First Sierra Investment Company, Inc.
Martin C. Smith

REPRESENTATION

For Claimant: Robert A. Buchman, Esq., King, Shapiro, Mittelman & Buchman, Lafayette, California

For Respondent: Theodore Phillips, Esq., Phillips, Greenberg, Strain & Hauser, San Francisco, California

Respondent Martin C. Smith represented himself.

CASE INFORMATION

Statement of Claim filed: March 23, 1993

Claimant's Submission Agreement signed: March 12, 1993

Statement of Answer and Counterclaim:

By First Sierra Investment Co.: May 28, 1993

Statement of Answer Filed:

By Martin Smith: None filed, however Respondent Smith appeared at and participated in the hearing.

Respondents' Submission Agreements signed:
First Sierra Investment Co.: May 29, 1993
Martin Smith: none submitted

HEARING INFORMATION

Hearing Date/Sessions: November 30, 1993 - 2 sessions

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged Respondents breached the terms of an agreement to re-purchase his fractional share of a limited partnership unit of Between the Lines, Limited Partnership if the investment did not succeed as anticipated. Claimant alleged that his investment in the limited partnership was actually a loan to the partnership, and that he executed subscription documents to comply with SEC requirements. Claimant alleged Respondent Smith paid him \$5,000, but was unable to make further contributions.

Respondent First Sierra denied all allegations of wrongdoing and further denied any liability to Claimant. First Sierra asserted that this transaction was a simple purchase of a high-risk investment by an accredited investor, and that First Sierra was not part of any agreement to re-purchase Claimant's limited partnership investment. Respondent First Sierra counterclaimed against Claimant for breach of warranties under the indemnity agreement in the subscription agreement signed by Claimant to indemnify First Sierra as the partnership's Dealer Manager.

RELIEF REQUESTED

Claimant requested damages of \$15,000 (the amount of the original \$20,000 investment less the \$5,000 paid to him by Respondent Smith).

Respondent First Sierra requested dismissal of the claim and an award of \$6,810 in damages on the counterclaim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive copies of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent First Sierra Investment Company, Inc., is liable for and shall pay to Claimant the sum of \$8,500.00.
2. Respondent Smith is liable for and shall pay to Claimant the sum of \$3,500 (this award takes into account the sum of \$5,000 previously paid to Claimant by Respondent Smith).
3. The counterclaim of First Sierra Investment Company, Inc., is dismissed in its entirety.
4. The parties shall each bear their respective costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall refund to Claimant the \$300 hearing session fee previously deposited with the NASD.

Respondents First Sierra Investment Company, Inc. and Martin C. Smith are each assessed \$300 for their one-half share of the total forum fee assessment of \$600 for two sessions.

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

ARBITRATION PANEL


Name

Lester Friedman

Public/Industry

Public

Arbitrator's Signature



Lester Friedman

12-28-93

Date of Decision:

Date Served: 12/28/93