

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Louis W. Jander Trust, Louis Jander TTEE
Lorraine U. Jander Trust, Lorraine U. Jander TTEE

93-02190

Name of Respondents

William O'Neill
J.W. Charles Securities, Inc.

REPRESENTATION

For Claimants, Louis W. Jander Trust, Louis Jander TTEE, Lorraine U. Jander Trust, Lor. Jander TE ("The Janders"): Russell L. Forkey, Esq.

For Respondents, J.W. Charles Securities, Inc. ("JWC"), William O'Neill ("O'Neill"): Gregory Tendrich, Esq. of J.W. Charles Securities, Inc.

CASE INFORMATION

Statement of Claim filed: 6/2/93.

Claimants' Submission Agreement signed on: 5/21/93.

Joint Statement of Answer filed by Respondents, JWC and O'Neill on: 8/6/93.

Respondent, JWC's Submission Agreement signed on: 8/10/93 by Greg Tendrich as Asst. General Counsel of JWC.

Respondent, O'Neill's Submission Agreement signed on: 8/10/93

HEARING INFORMATION

On February 11, 1994, in Fort Lauderdale, Fl. a hearing lasting two (2) sessions was held.

CASE SUMMARY

Claimants alleged that. Respondent, JWC through its employee, O'Neill induced them to purchase investments in a limited partnership, DiVall III which was unsuitable in light of the Claimants age and investment objectives; Respondent, O'Neill misrepresented or omitted numerous material facts including, the closing date of the offering, rate of return, expenses and risk factors; Respondent, JWC failed to adequately supervise O'Neill and that Respondent JWC supplied marketing material which was misleading.

Respondents, JWC and O'Neill, alleged that the investment was suitable for the Claimants based upon the financial information supplied by the Claimants, their stated investment objectives, and the small amount of the investment relative to their net worth; no misrepresentations were made; and all information provided to the Claimants by Respondents came directly from the prospectus and marketing materials provided by DiVall.

RELIEF REQUESTED

Claimants requested: Recision and/or damages in the amount of \$20,000, interest, costs, attorneys fees, and punitive in the amount of \$9,000.

Respondents requested: dismissal of all claims and an award of attorneys fees and costs associated with defense of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. The NASD erroneously appointed a panel of three arbitrators to hear and decide this matter, the claim being under \$30,000.00. With the agreement of all parties and arbitrators the hearing proceeded with the understanding that neither side would be charged with the extra \$100.00 required for a three-member panel.
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:

1. Respondents. JWC and O'Neill are found not liable and, therefore, all claims against them are hereby dismissed.
2. Respondents' request for attorneys' fees and costs is denied.

OTHER COSTS

Other than Forum fees detailed below, the parties shall each bear their own costs in regard to this matter, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$600. (two (2) sessions x \$300).

1. Claimants are hereby assessed forum fees of \$600 for which the NASD shall retain the \$300 previously deposited in partial satisfaction thereof leaving a balance due of \$300.00 payable to the National Association of Securities Dealers, Inc.
2. The NASD shall retain the \$100.00 non-refundable filing fee paid by Claimants.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name	Public/Industry
/s/	
<u>Lewis J. Levey, Esq./Chairman</u>	Public
/s/	
<u>Samuel Leigh, Esq./Panelist</u>	Public
/s/	
<u>Michael J. Schunk/Industry</u>	Panelist

Date of Decision: March 17, 1994