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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Lawrence E. Fuller & Jean E. Fuller

93-03584

Name of Respondent

Gerald W. Clevenger

REPRESENTATION

For Claimants, Lawrence Fuller and Jean E. Fuller: Michael W. Pursley, Arbitration Research Consultants, Safety Harbor, Florida.

For Respondent, Gerald W. Clevenger ("Clevenger"): pro se.

CASE INFORMATION

Statement of Claim filed: 8/1/93.

Claimant's Submission Agreement signed on: 8/12/93.

Respondent did not file a Statement of Answer nor did he submit an executed Uniform Submission Agreement as required under Section 12 of the Code of Arbitration Procedure (see "Other Issues").

HEARING INFORMATION

Hearing Date/Sessions: 11-14-94/two (2) sessions.

Hearing Location: Tampa, Florida.

CASE SUMMARY

Claimants alleged that they are an elderly couple living on their social security and investments totaling \$534,000.00; that Respondent, Clevenger, misappropriated all of their money and their investments into his own personal account; that, further, Clevenger committed other wrongful acts including the

publishing of a fictitious contract, false notary, unauthorized transactions in which he later placed Claimants' money into his own private placement limited partnership. Claimants maintained that Respondent also committed acts of misrepresentation, fraud, concealment, breach of fiduciary duty, negligence and gross negligence.

RELIEF REQUESTED

Claimants requested damages totaling \$53,000.00, plus interest, attorney's fees, costs and punitive damages.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent did not submit a Statement of Answer nor did he execute a Uniform Submission Agreement as required under Section 12 of the Code of Arbitration Procedure. Based upon the evidence submitted in Arbitrators' Exhibit No 1 regarding hearing notices to the parties and evidence of service submitted by Claimants, this arbitration panel found that proper notice existed as well as jurisdiction pursuant to Section 12(a) of the Code of Arbitration Procedure over Respondent. Pursuant to Section 29 of the Code of Arbitration Procedure and based upon evidence in Arbitrators' Exhibit No. 1, this arbitration panel proceeded with the hearing in Respondent's absence.

2. The parties at the hearing 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. Respondent, Clevenger, is found liable and shall pay to the Claimants the amount of \$53,000.00 plus interest of \$45,601.20 this amount of \$98,601.20 shall be reduced by distributions made by Fund I to Claimants of \$30,012.60 for a total due to Claimants of \$68,588.60.

2. Respondent, Clevenger, is further found liable to Claimants for all costs, expenses and disbursements including attorney's fees incurred in connection with this proceeding, the amounts of which shall be determined by a court of competent jurisdiction.

3. Claimants' request for punitive damages is hereby denied.

4. Additionally, Claimants shall return certificates for 53 units of Fund I to Respondent.

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OTHER COSTS

The parties shall bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the panel has assessed Forum Fees in the amount of \$1,000.00 (two (2) hearing sessions X \$500.00).

1. Respondent, Clevenger, is hereby assessed Forum Fees in the amount of \$1,000.00, \$500.00 of which shall be paid directly to Claimants and \$500.00 to be paid to the NASD, Inc.
2. The NASD shall retain the non-refundable filing fee of \$150.00 and the filing fee of \$500.00 previously paid by Claimants.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Bruce A. Beery, Esq.

Public/Chairman

/s/

Edward J. Adrian

Public/Panelist

/s/

Harold C. Anders

Industry/Panelist

Date of Decision: January 12, 1995