

**N.A.S.D. AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Jesus Salazar

NASD Arbitration

No. 93-03889

v.

Name of Respondents

Equity Programs Corp.

Donald Clinton Rogers

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**REPRESENTATION**

For Claimant: Paul W. Thomas, Esq., Carlsbad, California

For Respondents: Peter Shenass, Esq., Shenass, Shaw & Spievak, San Diego, California

**CASE INFORMATION**

Statement of Claim filed: September 24, 1993

Claimant's Submission Agreement signed: June 14, 1993

Joint Statement of Answer filed: December 3, 1993

Respondents' Submission Agreements signed:

Equity Programs on December 3, 1993

Donald Clinton Rogers on December 3, 1993

**HEARING INFORMATION**

Hearing Dates / Sessions: June 14, 1994 - three sessions

Hearing Location: San Diego, California

### **CASE SUMMARY**

Claimant alleged misrepresentation, fraud, negligence, lack of suitability and breach of fiduciary duty with respect to investments in Excel Properties, Ltd., a California limited partnership, and Commonwealth Equity Trust, a California real estate investment trust. Claimant alleged that Respondents failed to advise him of the true risks of the investments, that Respondents negligently supplied false information and made material misrepresentations.

Respondents denied the allegations, and asserted that all particulars were disclosed to Claimant before investments were made, that Claimant relied in part on the advice and counsel of an attorney friend in making investment decisions, and that Claimant failed to mitigate damages. Respondents also asserted that all claims were barred by applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimant requested rescission of the investments at issue and return of \$100,000, plus punitive damages, interest, attorney's fees and costs of arbitration.

Respondents requested dismissal of all claims, and an award of attorney's fees and costs of arbitration.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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 are jointly and severally liable for and shall pay to Claimant the sum of \$16,500 in satisfaction of all claims.
2. The claim for punitive damages is dismissed.
3. The parties shall each bear their respective costs, including attorney's fees.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$150 non-refundable filing fee, and shall refund the \$500 hearing session deposit paid by Claimant.

Respondents are jointly and severally assessed \$1500 in forum fees (3 sessions @ \$500 / session).

Fees are payable to the NASD, Inc.

### ARBITRATORS

#### Name

Harvey C. Flodin

Leo B. Rotter

Marjorie B. Newsom

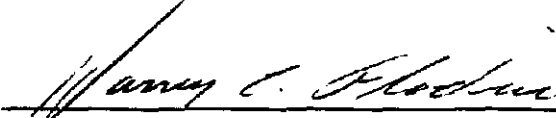
#### Public / Industry

Public Arbitrator

Industry Arbitrator

Public Arbitrator

#### Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Harvey C. Flodin

\_\_\_\_\_  
Leo B. Rotter

\_\_\_\_\_  
Marjorie B. Newsom

Served 6/30/94

Date of Decision: \_\_\_\_\_

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Public Arbitrator

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Public Arbitrator

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*Marjorie B. Newsom*  
Marjorie B. Newsom

Served 6/30/94

Date of Decision: June 14/94