

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Roger Bolduc, Sr.

vs.

Award #
93-05004

Name of Respondents

Ellen L. Schowalter
Patricia Ann Seymour
Titan/Value Equities Group, Inc.
Jonathan Alan & Co., Inc.

REPRESENTATION

For Claimant, Roger Bolduc, Sr. ("Claimant"), Howard M. Rosenfield, Esq., located in Avon, Connecticut.

For Respondents, Ellen L. Schowalter ("Schowalter") and Titan/Value Equities Group, Inc. ("Titan"), Daniel L. Schwartz, Esq. from the law firm of Day, Berry & Howard, located in Hartford, Connecticut.

For Respondent, Patricia Ann Seymour ("Seymour"), Elizabeth J. Stewart, Esq. from the law firm of Murtha, Cullina, Richter and Pinney, located in New Haven, Connecticut.

For Respondent, Jonathan Alan & Co, Inc. ("Jonathan Alan"), Mitchel Feinglas, located in Boulder, Colorado.

CASE INFORMATION

Statement of Claim was filed on December 2, 1993.

Claimant's Submission Agreement was signed on November 26, 1993.

Amended Statement of Claim was filed on May 13, 1994.

Joint Statement of Answer and Cross Claim was filed by Schowalter and Titan on February 9, 1994.

Schowalter's Submission Agreement was signed on January 6, 1994.

Titan's Submission Agreement was signed on January 3, 1994.

Revised Statement of Answer and Cross Claim was filed by Schowalter and Titan on July 19, 1994.

Titan's Motion to Dismiss was filed on March 25, 1994.

Schowalter's Motion to Dismiss was filed on March 25, 1994.

Titan's and Schowalter's Motions to Dismiss Revised Statement of Claim were filed on September 21, 1994.

Statement of Answer was filed by Seymour on March 21, 1994.

Seymour's Submission Agreement was signed on March 8, 1994.

Respondent, Jonathan Alan, did not file a Statement of Answer or execute a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:	April 11, 1995	-	2 sessions
	April 12, 1995	-	2 sessions
	April 13, 1995	-	2 sessions
	May 25, 1995	-	3 sessions

Hearing Location: NASD offices, located in New York, New York.

CASE SUMMARY

Claimant alleges that he commenced this arbitration claim to recover damages including commissions paid in connection with transactions in his account due to breach of contract during the time his account was managed by Titan and Jonathan Alan. Claimant also alleges that Seymour and Titan breached their fiduciary duty owed to him, and committed other fraudulent activity, all of which resulted in substantial losses in Claimant's account. Claimant contends that he purchased the following limited partnerships interests, which are the subject of this action based upon the recommendation of Seymour: Divall Insured Income Properties; Historic Housing for Seniors; Secured Invest Resources; Master Mortgage Fund; and Textainer Equipment Fund II.

Claimant further alleges that Respondents engaged in numerous fraudulent acts and breaches of contractual obligations; misrepresentation; violation of securities laws: various rules of the New York Stock Exchange; various National Association of Securities Dealers, Inc. ("NASD") Rules of Fair Practice; negligence and gross negligence; and negligent supervision.

Respondent Seymour denies all of Claimant's allegations regarding misrepresentation, breach of fiduciary duty, fraud, negligence, unsuitable investment advise and violations of securities laws. Seymour also denies that she caused Claimant to incur "substantial losses in his account". In addition, Seymour asserts five affirmative defenses:

Respondents Schowalter and Titan deny all of Claimant's claims against them, including but not limited to Claimant's claims of unsuitable investment advice, breach of contract, misrepresentation, breach of fiduciary duties, violation of securities laws, negligence and failure to supervise. In addition, Schowalter and Titan assert nine affirmative defenses:

Titan interposes a two-count Cross Claim against Jonathan Alan for alleged contractual indemnity arising out of the April 30, 1990 agreement, and alleged common law indemnity for any and all losses, liability, costs, expenses, attorney's fees and all other damages that Titan incurs as a result of this case.

RELIEF REQUESTED

Claimant requests compensatory damages in an amount in excess of the out-of-pocket losses of \$220,000.00 as measured by market adjusted losses of \$312,147.96 together with "make-whole award" attorney's fees of \$103,008.83 for a total of \$415,156.79. Claimant also requested pre- and post-award interest, punitive damages in such amount as the arbitrators deem appropriate, plus payment of all Claimant's costs, expenses and disbursements, including reasonable attorney's fees.

Respondent Seymour requests that the Statement of Claim be dismissed in its entirety.

Respondents Schowalter and Titan request dismissal of all claims, dismissal of Schowalter and Titan as Respondents from this arbitration, order Jonathan Alan to indemnify Titan for any and all losses, liability, costs, expenses attorneys, fees and other damages incurred by Titan.

OTHER ISSUES CONSIDERED & DECIDED

The parties in attendance at the hearing have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive confirmed copies of the Award while the original remains on file with the NASD.

The Panel decided on the following issues: 1) Respondents Schowalter, Titan and Seymour moved to dismiss the Statement of Claim. This motion was denied. 2) Claimant moved to amend the Statement of Claim to submit revised Statement of Claim which was granted; 3) Respondents' motion to dismiss revised complaint was denied; and 4) Respondent Jonathan Alan moved to testify via telephone which was opposed by Claimant. Jonathan Alan's motion was granted.

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. Claimant's request for damages as to Schowalter, and Titan is denied.
2. Claimant's request for damages as to Seymour and Jonathan Alan is granted in the amount of **ONE HUNDRED THIRTY THREE THOUSAND DOLLARS AND ZERO CENTS (\$133,000.00)** to be paid as follows:
 - a) Respondent Seymour is liable to Claimant for forty percent of the amount awarded (40%) or \$53,200.00.
 - b) Respondent Jonathan Alan is liable to Claimant for sixty percent of the amount awarded (60%) or \$79,800.00.
3. Claimant's request for filing fees and forum fees is granted as indicated in the Forum Fees section of the decision.
4. Claimant's request for expenses including attorney's fees is denied.
5. Titan's request for indemnification is denied.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-refundable Claim Filing Fee - \$200.00

Non-refundable Cross Claim Filing Fee - \$500.00

Hearing Session Fees - \$6750.00 (9 hearing sessions @ \$750.00 per session)

Total Fees = \$7,450.00

1. Claimant is assessed a \$200.00 non-refundable filing fee. Claimant previously paid \$950.00 and is entitled to a refund of \$750.00.
2. Respondents Titan and Schowalter are assessed a \$500.00 non-refundable filing fee for the Cross Claim.
3. Respondent Seymour is assessed forty percent (40%) of total fees excluding filing fees, \$2,700.00. Respondent Seymour shall satisfy the fees assessed by reimbursing Claimant \$750.00 and by remitting the balance \$1,950.00 to the NASD.
4. Respondent Jonathan Alan is assessed sixty percent (60%) of the total fees excluding filing fees, \$4,050.00.

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

ARBITRATION PANEL

Neil J. Carey	-	Public Chairperson
Martin Izaak	-	Public Panelist
Richard Gueren	-	Industry Panelist

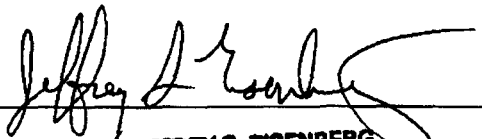
Concurring Arbitrator's Signature



Neil J. Carey

Date of Decision: July 18, 1995

On this 18th day of ~~June~~ ^{July}, 1995, before me personally appeared Neil J. Carey known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



JEFFREY S. EISENBERG
Notary Public, State of New York
No. 31-4969445
Qualified in New York County 1996
Commission Expires July 18, 1996

Award #93-05004

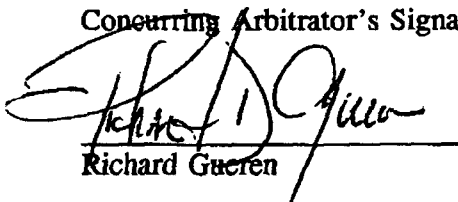
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ARBITRATION PANEL

Neil J. Carey	-	Public Chairperson
Martin Izaak	-	Public Panelist
Richard Gueren	-	Industry Panelist

Concurring Arbitrator's Signature


Richard Gueren

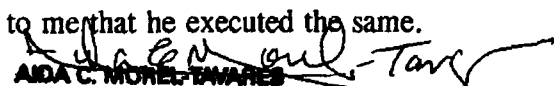
Executed on:

Date of Decision:

July 11, 1995

Date of Decision: July 18, 1995

On this 11 day of July, 1995, before me personally appeared Richard Gueren known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


AIDA C. MICHEL-EVARES
Notary Public, State of New York
No. 01M05038111
Qualified in New York County
Commission Expires November 21, 1996

Award #93-05004

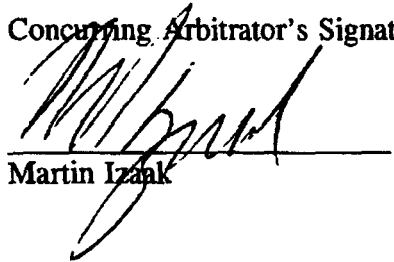
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Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

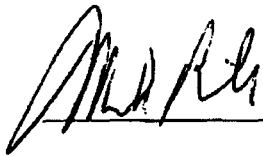
Neil J. Carey	-	Public Chairperson
Martin Izaak	-	Public Panelist
Richard Gueren	-	Industry Panelist

Concurring Arbitrator's Signature


Martin Izaak

Date of Decision: July 18, 1995

On this 3 day of ~~June~~ ^{July}, 1995, before me personally appeared Martin Izaak known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



MARK BIANCHI
Notary Public, State of New York
No. 24-4994720
Qualified in Kings County
Commission Expires April 13, 1996