

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gilston Electrical Contracting Corp.

vs.

94-00315

Name of Respondents

Americorp Securities, Inc.
Jamie Lanz

REPRESENTATION

Claimant Gilston Electrical Contracting Corporation ("Gilston") was represented by Eva H. Posman, Esq., New York City, New York.

Respondent Americorp Securities, Inc. ("Americorp") was represented by William M. Moran, Esq., of the law firm Camhy, Karlinsky & Stein, New York City, New York.

CASE INFORMATION

The Statement of Claim was filed on January 24, 1994.

Claimant's Submission Agreement was signed on January 24, 1994.

A Joint Statement of Answer was filed on March 8, 1994. A Submission Agreement filed by Respondent Americorp was executed on March 4, 1994. A Submission Agreement filed by Respondent Jamie Lanz was executed on March 3, 1994.

HEARING INFORMATION

Pre-Hearing Conference: December 6, 1994 - 1 Session

Hearing Dates/Sessions: December 12, 1994 - 2 Sessions
December 13, 1994 - 2 Sessions

Post Hearing Conference: March 10, 1994 - 1 Session

CASE SUMMARY

Claimant alleged that in July of 1993, Claimant had \$300,000.00 of its working capital was in a bank savings account earning 2% interest. Claimants' accountants suggested that Claimant could earn more than it was earning in the bank by investing in a tax-free money-market type investment, which would yield more but which would still give claimant access to the entire principal amount when and as needed for business purposes. Claimant's accountant contacted Respondent Lanz for some recommendations. Respondent Lanz allegedly recommended Nuveen National Insured Premium Income Fund #2 (the "Nuveen Fund"). Claimant asserted that Claimant's investment needs were described to Respondent Lanz by their accountant who stressed that Claimant required an investment vehicle that did not involve any risk to principal, and the investment to be made had to be short term because Claimant needed access to the principal for its business. Specifically, Claimant alleged that its accountant stated to Respondent Lanz that Claimant would need the entire principal by mid-February of 1994 at the very latest, since Claimant's fiscal year would end in March. Further, Claimant alleged that Claimant's accountant inquired whether the Nuveen Fund was appropriate in those circumstances and Respondent Lanz assured the accountant that it was. Respondent Lanz purchased 20,000 shares of the Nuveen Fund for Claimant's account.

Claimant also alleged that on or about July 22, 1993, Respondent Lanz contacted Claimant directly for the first time, sending Claimant a letter confirming its purchase of 20,000 shares of "Nuveen Income Muni Fund" at \$15 per share. Claimant further alleged that at the same time that Lanz confirmed Claimant's purchase of the Nuveen Fund shares and advised Claimant of its account number, Respondent Lanz sent Claimant a customer agreement and other forms necessary for the opening of an account.

In mid-September, Claimant allegedly contacted respondent Lanz to inquire as to the reason Claimant had not received an account statement for the month of August, as well as to check on the then current yield. In response to this inquiry, Respondent Lanz allegedly explained that Americorp does not send a monthly statement if there was no activity in the account during the month. In addition, Respondent Lanz allegedly advised Claimant that the market value of the Nuveen Fund shares purchased had dropped from \$300,000.00 to \$280,000.00 explaining that it was usual for the price of the shares to drop in the first month after an issue closed and stated unequivocally that the price of the shares would come back the next month. Claimant alleged that in reliance on Respondent's representation, Claimant did not immediately liquidate the Nuveen Fund shares. Thereafter, Claimant allegedly learned that the price of the Nuveen Fund shares had decreased further during the month of October. Claimant maintained that it immediately contacted their accountant who agreed that the product selected by Respondent Lanz was inappropriate and unsuitable for Claimant. Claimant's accountant allegedly contacted Respondent Lanz seeking rescission of the transaction on behalf of Claimant. Claimant's request for rescission was allegedly rejected by Respondent Americorp. Upon learning that respondents would not rescind the transaction, Claimant liquidated its position incurring a loss of almost \$50,000.

Claimant alleged that Respondents failed to provide Claimant with a prospectus in violation of

at which it ultimately sold, thereby, increasing any loss sustained by it due to its own conduct.

As its affirmative defenses to all claims, Respondents asserted that the purchase by Claimant of the Nuveen Fund was authorized by Claimant and made with the knowledge, permission and consent of Claimant's representative; that claimant ratified and affirmed its purchase; that claimant was duly furnished with the prospectus relating to the securities purchased by it; that the Nuveen Fund as an investment was not an unsuitable investment for Claimant that insofar as any claim is based or predicated upon an alleged violation of the "Know Your Customer Rule" of the New York Stock Exchange, such Rule does not give rise to a private right of action; that Claimant had the opportunity to sell the Nuveen Fund shares purchased by it at any time between July 22, 1993, and December 21, 1993, during which time the shares in the Nuveen Fund traded during such period at prices higher than the price at which Claimant sold on December 21, 1993 but neglected and refused to do so; that any losses sustained by Claimant enabled Claimant to benefit to the extent of a federal tax deduction based on such loss, and to compensate Claimant for the full loss without deducting federal and state tax benefits would overcompensate Claimant and result in Claimant achieving a profit at Respondent's expense and that insofar as Claimant's claim is predicated upon alleged acts of negligence, claimant is guilty of its own contributory negligence and may therefore not recover.

RELIEF REQUESTED

Claimant Gilston Electrical Contracting Corp. requested an award in its favor and against Respondents, in the sum of \$45,597.60, together with reasonable attorney fees and the costs of these proceedings and such other and further relief as seems just, proper and equitable.

Respondent requested that an award be granted in favor of Respondents dismissing each and every claim asserted in the statement of claim and granting respondents their reasonable attorney fees and the costs of these proceedings.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant requested that the panel grant a request pursuant to Section 40 to reopen the proceedings or to accept additional evidence on the grounds that Claimant had learned of new information which Claimant maintained was contrary to Respondents' responses to Claimant's document request.

Respondents objected to the request arguing that there was no justification to reopen the hearings or to accept additional evidence. Respondents stated that they were under no continuing duty to supplement their Section 32 (b) disclosure by reason of the filing of an NASD proceeding after the effective date of that disclosure.

After reviewing the briefs that were submitted by the parties on the issue of reopening the hearings, the panel determined to deny the request.

the federal securities laws; that the purchase of the Nuveen Fund shares was unsuitable for claimant, in light of Claimant's need for liquidity and preservation of principal; that Respondent Americorp breached its fiduciary duty to Claimant; that the purchase of unsuitable securities for Claimant's account was a violation of NASD and NYSE rules and therefore, a breach of Americorp's contract with claimant; that respondent Lanz made misrepresentation with knowledge of their falsity of the representations; the respondent failed to obtain written authority from claimant to accept an order from claimant's accountant(s) for the claimant's account in violate of NYSE rules; and the respondent Americorp is liable for the negligent and intentional acts of Respondent Lanz as a control person under the federal security laws, and under the doctrine of respondent superior.

Respondents denied all allegations of wrongdoing asserted against them. Respondents maintained that Claimant had engaged an accounting firm as its accountants, business and investment advisors. Respondent also maintained that prior to July 22, 1993, and on or about July 20, 1993, Respondent Lanz, was advised by one of Claimant's accountants that claimant had \$1 million dollars and was dissatisfied with its present bank money market return and was seeking the opportunity to obtain a better rate of return. Respondents also maintained that Respondent Lanz advised Claimant's accountant that the Nuveen Fund would be shortly brought to market and that the Nuveen Fund was a newly organized close end diversified management company with a primary objective of income exempt from federal income tax which had an investment objective of investing its assets in a diversified portfolio of insured municipal obligations. Claimant's accountant allegedly requested that a preliminary prospectus be delivered to him for consideration by his client, and such a preliminary prospectus was delivered. Thereafter, on or about July 22, 1993, Claimant's accountant advised Respondent Lanz that Claimant had determined to purchase \$300,000.00 of Nuveen Fund and Respondent Lanz would be hearing from a representative from his client Gilston directly. Thereafter, and on or about July 21, 1993, Respondent Lanz allegedly received a telephone call from Barbara Gilston acting for and on behalf of Claimant, who confirmed claimant's purchase of the Nuveen Fund, advised Respondent Lanz of all relevant new account information and requested instructions as to where to remit payment for the purchase.

Further, Respondents maintained that new account forms, brokerage account and trading resolutions, and a customer agreement were sent to Claimant, that all of these forms were duly completed and returned to Bear Stearns, who is the clearing broker for respondent Americorp; that in furtherance of this transaction, a purchase confirmation was sent to Claimant by Bear Stearns; and that Bear Stearns sent to Claimant a prospectus relating to the Nuveen Fund. Moreover, Respondents maintained that at no time after receipt of the confirmation and prospectus did anyone acting for or on Claimants behalf deny the transaction or seek to disaffirm the transaction, but rather paid for the purchase of the Nuveen Fund in full. Further, Respondents maintained that information relating to the Nuveen Fund and the various risks associated therewith, were fully disclosed and described in the prospectus sent to Claimant.

Respondent further maintained that subsequent to its purchase of the Nuveen Fund, and from time to time, Claimant asked for and received information concerning the market price of the shares of the Nuveen Fund and that Claimant had the full power and ability to sell the shares of the Nuveen Fund but did not do so when it could have sold at prices higher than the prices

AWARD

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

1. Respondent Americorp Securities, Inc. be and hereby are liable and shall pay to the Claimant the sum of \$11,975.00. It is the finding of the panel that any losses incurred were partially caused by the claimant and other third parties who were not parties to this proceeding.
2. All claims against respondent Lanz be and hereby are denied.
3. Each party shall bear their respective costs, including attorneys fees.
4. All other claims be and hereby are denied.

FORUM FEES

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

4 Sessions X \$750.00 = \$3,000.00 - \$750.00 Hearing Session Deposit = \$2,250.00 due.

Claimant be and hereby is liable and shall pay to the NASD the sum of \$1,500.00 representing one-half of the forum fees assessed. Claimant previously deposited a hearing sessions deposit in the amount of \$750.00 with the NASD. Therefore, the amount due and owing by the Claimant is \$750.00.

Respondent Americorp Securities be and hereby is liable and shall pay to the NASD the sum of \$1,500.00 representing one half of all outstanding forum fees.

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

Concurring Arbitrators' Signatures
Name



Richard W. Vallario, Esq.
Public Arbitrator - Chairperson

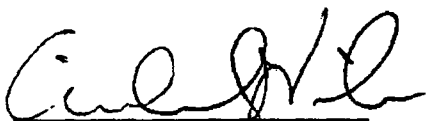
Walter A. Kapuscinski
Industry Arbitrator

Jay B. Baron
Public Arbitrator

STATE OF NEW JERSEY

COUNTY OF ESSEX

On this 10th day of April, 1995, ~~1994~~, before me personally appeared RICHARD W. VALLARIO known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

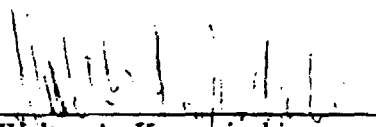


MICHAEL J. VIOLA, ESQ.
Attorney at Law
State of New Jersey

Date of Decision: April 27, 1995

Concurring Arbitrators' Signatures
Name

Richard W. Vallario, Esq.
Public Arbitrator - Chairperson



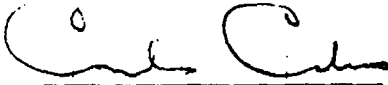
Walter A. Kapuscinski
Industry Arbitrator

Jay B. Baron
Public Arbitrator

STATE OF

COUNTY OF

On this 10th day of April, 1995, before me personally appeared
Walter Kapuscinski known to me to be the individual described in and who executed the
foregoing instrument and duly acknowledged to me that he/she executed the same.



CARLOS COBOS
Notary Public, State of New York
No. 43-4970663
Qualified in Richmond County
Commission Expires August 13, 1996

Date of Decision: April 27, 1995

Concurring Arbitrators' Signatures
Name

Richard W. Vallario, Esq.
Public Arbitrator - Chairperson

Walter A. Kapuscinski
Industry Arbitrator

Jay B. Baron
Jay B. Baron
Public Arbitrator

STATE OF New York

COUNTY OF New York

On this 12th day of April, 1995, before me personally appeared
Jay B. Baron known to me to be the individual described in and who executed the
foregoing instrument and duly acknowledged to me that he/she executed the same.

Patricia B. Wild

PATRICIA B. WILD
Notary Public, State of New York
No. 4787415
Qualified in Westchester County
Commission Expires June 30, 1995

Date of Decision: April 27, 1995