

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert and Ellen T. Olt

Case No. 94-01222

Name of Respondents

**Charles James Givens, Jr.
James Lawrence Paris
Brent Jeffrey Cozlin
Delta First Financial, Inc.
The Charles J. Givens Organization**

REPRESENTATION

For Claimants, Robert Olt and Ellen T. Olt ("Olts"): Neal J. Blaher, Esq., Orlando, Florida.

For Respondents, The Charles J. Givens Organization ("CJGO") and Charles J. Givens, Jr. ("Givens"): James J. Moyland, Chicago, Illinois.

For Respondents, Delta First Financial, Inc. ("DFF") and Brent Cozlin ("Cozlin"): Marvin E. Rooks, Esq., Longwood, Florida.

Respondent, James L. Paris ("Paris"): pro se.

CASE INFORMATION

Statement of Claim filed: March 31, 1994. Claimants' Submission Agreement signed: March 24, 1994.

Respondents', CJGO and Givens', Statement of Answer filed: July 15, 1994.

Respondent, Charles J. Givens, Jr., did not file a Statement of Answer or signed a Submission Agreement as required by Sections 12 and 25 of the Code. (see "Other Issues").

Respondents, Paris, Cozlin and DFF's, Statements of Answer received July 6, 1994, July 12, 1994 and July 15, 1994 respectively.

Respondents Paris, Cozlin and DFF's, Submission Agreements where signed on July 5, 1994, July 7, 1994 and July 15, 1994 respectively.

HEARING INFORMATION

On May 23, 24, and 25, 1995; and June 23, 1995, in Tampa, Florida, hearings lasting eight (8) sessions were conducted.

CASE SUMMARY

Claimants alleged that through misrepresentations and omissions made by Respondent, Brent Cozlin and former Respondent, James Paris, Claimants were induced to buy three (3) unsuitable limited partnerships: Enex Oil & Gas Income Program 90-91 Income & Retirement Series 531 and 532; Preferred Income Fund III; and New York Life Oil & Gas Net Profits Producing Properties III-D. The limited partnership purchases totaled \$93,200.00 which amounted to approximately 100% of the Claimants' IRA accounts and slightly more than half of the funds they had available for investing during their retirement years, which had just begun. The limited partnerships were recommended to the Claimants based on a comprehensive personal and financial profile they completed at the request of Respondents, which listed investable assets of \$175,000.00 and investment objectives of safety of principal, income, growth, liquidity and inflation protection. Claimants were promised returns of between 10 and 16% on their investments in the limited partnerships and that the funds would be available to them on request after only a short period of time. However, Respondents discussed neither the risks nor the unsuitability of the investments with Claimants.

Claimants assert that Respondents conduct amounted to violations of the Florida Securities and Investor Protection Act, The Florida Civil Theft Statute and common law fraud, breach of fiduciary duty, negligence and gross negligence and breach of contract.

Respondents denied all allegations of wrongdoing and alleged that the Respondents exercised due diligence in their conduct with Claimants in determining Claimants' suitability. Respondents suitability determination was made in reliance of Claimants representations. All recommendations and advice given to the Claimants were made in good faith and were reasonable in light of all the facts disclosed and known to the Respondents at the time of making the recommendations and giving of advice. The nature of the investments and attendant risks were fully disclosed to the Claimants. Claimants expressly by the documents signed and statements made represented to the Respondents that they were suitable for the investments and they understood the nature of the investments and the attendant risks.

Further, Respondent, Charles J. Givens, Jr., individually alleges that he did not select the investments offered to the Olts nor offer or sell the investments to the Olts, nor supervise anyone who did offer or sell the investments to the Olts, and therefore, Mr. Givens should have no personal liability, even if it is determined by the Panel that the Olts are entitled to some relief in this matter.

RELIEF REQUESTED

Claimants requested compensatory damages under the statutory counts, which would include the formula set forth under Section 517.11 Florida Statutes and a trebling of the damages under Section 772.11 Florida Statutes. In addition, Claimants seek pre-judgment interest on the compensatory and/or the trebled damages, costs and fees of this action (including expert witness fees) and a reasonable attorneys' fee as provided for under the Florida Securities Act and the Florida Civil Theft Statute. In addition to a trebling of the damages under the Florida Civil Theft Statute, Claimants have brought a claim for punitive damages under their common law claims.

Respondents requested dismissal of the claim in its entirety and award for costs and attorney's fees incurred in connection with this proceeding and any other further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED & DECIDED

1. Charles J. Givens, Jr. failed to submit an executed Submission Agreement. This Panel finds that it has jurisdiction pursuant to Section 12 of the NASD Code of Arbitration Procedure because Mr. Givens was an associated person of DFF at the time this controversy arose.

2. CJGO was dismissed by this panel from the Statement of Claim at the commencement of the proceeding for lack of jurisdiction by this forum.

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Other Issues (Cont.)

3. During the course of the arbitration hearing held May 23 through 25, 1995, Claimants dismissed their claims against Respondent, James L. Paris.

4. The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

AWARD

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

Respondents, Delta First Financial, Inc. and Charles J. Givens, Jr., are found liable, jointly and severally, and shall pay to the Claimants the amount of \$103,000.00.

Upon receipt of the total Award of \$103,000.00 the Claimant shall immediately assign back to Delta First Financial, Inc. the partnership interest in Enex Oil & Gas Income Program 90-91 Income & Retirement Series 531 and 532; Preferred Income Fund III; and New York Life Oil & Gas Net Profits Producing Properties III-D.

Respondent, Brent J. Cozlin, is found not liable and, therefore, all claims against him are hereby dismissed.

Claimants' requests for attorney's fees, expert witness fees, costs, expenses, punitive damages, treble damages and interest are denied.

Respondents' requests for attorney's fees, and costs are denied.

OTHER COSTS

Other than as provided below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$6,000.00 (8 hearing sessions X \$750.00 per session).

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Forum Fees (Cont.)

Respondents, DFF and Givens, are hereby assessed \$6,000.00 jointly and severally. \$750.00 of which shall be paid directly to the Claimants and \$5,250.00 of which shall be paid to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

Respondents, DFF and Givens, shall reimburse the Claimants \$200.00 for the non-refundable filing fee.

The NASD shall retain the session deposit of \$750.00 paid by Claimant.

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

Arbitrator's Signature

/S/
James A. Cormack

Public

/S/
Beverly S. Gordon

Industry

/S/
Edward J. Adrian

Public

Date of Decision: August 31, 1995