

## AWARD

### **NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

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In the Matter of the Arbitration Between

#### Names of Claimants

Howard and Joanne Hughes

94-02158

#### Names of Respondents

Sigma Financial Corp.  
Jerome S. Rydell  
Stephen Donaldson  
William J. Lynch, III  
W.S. Griffith & Co., Inc.

#### Names of Third-Party Respondents

Brian J. Sheen  
Sheen Financial Resources, Inc.

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## REPRESENTATION

For Claimants Howard and Joanne Hughes ("Mr. and Mrs. Hughes"): Brian J. Sheen of Investment Loss Recovery Services, Inc., Boca Raton, Florida.

For Respondents Sigma Financial Corp. ("Sigma Financial") and Jerome S. Rydell ("Rydell"): Joseph H. Spiegel, Esq. of Joseph H. Spiegel, P.C., Southfield, Michigan.

For Respondent Stephen Donaldson ("Donaldson"): Stanley T. Padgett, Esq. of Padgett & Mierzwinski, P.A., Tampa, Florida.

For Respondent William J. Lynch, III ("Lynch"): Eric E. Ludin, Esq. of Piper & Ludin, P.A., St. Petersburg, Florida.

For Respondent W. S. Griffith & Co., Inc.: John H. Beers, Esq., Hartford, Connecticut.

For Third-Party Respondents, Brian J. Sheen ("Sheen") and Sheen Financial Resources, Inc. ("Sheen Financial"): Brian J. Sheen of Investment Loss Recovery Services, Inc., Boca Raton, Florida.

## CASE INFORMATION

Statement of Claim filed: April 11, 1994.

Claimants' Amended Statement of Claim filed: March 30, 1997.

Claimants' Submission Agreement signed: April 11, 1994.

Respondents Sigma Financial and Rydell's Joint Statement of Answer, Affirmative Defenses and Third-Party Complaint filed: April 16, 1996.

Respondents Sigma Financial and Rydell did not file executed Submission Agreements.

Respondents Sigma Financial and Rydell's Counterclaim filed: July 25, 1996.

Respondent Donaldson's Statement of Answer filed: December 3, 1996.

Respondent Donaldson's Answer to the Amended Statement of Claim filed: May 15, 1997.

Respondent Donaldson did not file an executed Submission Agreement.

Respondent Lynch's Statement of Answer filed: November 20, 1996.

Respondent Lynch's Submission Agreement signed: November 21, 1996.

Respondent W.S. Griffith's Statement of Answer filed: October 20, 1995.

Respondent W.S. Griffith's Submission Agreement/Corporate Acknowledgment signed: September 29, 1995 by Gerard A. Rocchi on behalf of the firm.

Third-Party Respondents Sheen Financial and Sheen's Motion to Dismiss Third-Party Statement of Claim and Motion to Strike filed: August 6, 1996.

Third-Party Respondents Sheen Financial and Sheen did not file executed Submission Agreements.

### **HEARING INFORMATION**

On November 21, 1996 a telephonic pre hearing conference lasting one session was conducted with the panel. On March 31, 1997 a second telephonic pre hearing conference lasting one session was conducted with the Chairperson.

On June 2, 3, 4 and 5, 1997 hearings lasting eight (8) sessions were conducted in Fort Lauderdale, Florida.

### **CASE SUMMARY**

Claimants alleged that they are extremely conservative investors whose investment objectives were safety of principal, growth and income and that in the summer of 1991, upon the recommendation of Sigma representative, Thomas Strickland ("Strickland"), they liquidated \$50,000.00 of a money market fund and invested in an illiquid, speculative, private placement entitled Marketplace West & Company, Inc. ("Marketplace West"). Claimants further alleged that Marketplace West was supposed to be a safe 18-month bond that would pay monthly

income, which was imperative to Claimants as they were unemployed and supporting themselves through an inheritance they had received. Claimants next alleged that Strickland, with the help of Respondents Donaldson, a registered representative of Sigma Financial, Lynch, a registered representative of W.S. Griffith & Co. and Rydell, a registered representative of Sigma Financial, explained to the Claimants that the investment would provide them with the necessary income, plus additional income and a full return of principal within 18 months; that instead Claimants received one investment check for interest and on May 4, 1993, a notice of a Chapter 11 bankruptcy filing by Marketplace West. Claimants contended that they had trusted Respondents to look after their best interests and to invest their funds in suitable investments that met their needs and objectives of safety of principal, growth and income but that instead they were sold a speculative, illiquid investment that was not registered with the SEC, NASD or Florida Securities Division. Claimants maintained that both Sigma Financial and W.S. Griffith had a legal responsibility to supervise and approve all outside business activities and investment related offerings which their registered representatives offered; that both Sigma Financial and W.S. Griffith were negligent in their supervisory obligations therefore creating an atmosphere of endorsement to the investors who placed their faith in the firms and their registered representatives. Claimants also alleged that Mr. Hughes was drunk when he made the investment at issue, having drank a case of beer before his meeting with Strickland; that Mr. Hughes' education is limited to a high school equivalency diploma and that he has had no formal training in investments or financial planning nor does he have substantial experience in stocks or private placement bonds. Claimants maintained that Respondents' actions caused them to lose their earnings and principal.

Respondents Sigma Financial and Rydell denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimants purchased their investment in Marketplace West & Company, Inc. while they were customers of Thomas Strickland and his broker dealer at the time, Sheen Financial Resources, Inc., which was owned and controlled by Brian J. Sheen, Claimants' representative in this matter; that Claimants purchased a note and made a loan to Marketplace West through the efforts of Sheen on July 11, 1991; that at no time did Sigma Financial have any contact with the Claimants with respect to their purchase of Marketplace West, all such activities having been engaged in during the time they were customers of Sheen Financial; that Sheen, through a series of false and misleading statements, has attempted to avoid responsibility for his own wrongful actions; and, that Sheen caused Claimants to pursue a claim against Sigma Financial and Rydell even though there is no factual or legal basis for the claim. Respondents Sigma Financial and Rydell contended that Claimants at no time relied upon them; that since Claimants did not have an account with Sigma Financial at the time of the purchase they knew or should have known that they could not make a claim against Sigma Financial under any theory of law or based upon any set of facts; and, that Sigma Financial did not nor could it control Marketplace West, Strickland or Sheen. Respondents Sigma Financial and Rydell also alleged that it is admitted in public statements that Claimant, Mr. Hughes, did not rely upon Sigma Financial, apparently because according to Sheen, Mr. Hughes was drunk at the time they made their investment; and, that since they had no knowledge of Sigma Financial or Rydell and because Sigma Financial did not issue securities nor did it participate in the issuance and/or sale of securities to the Claimants, there can be no basis for liability on the part of Sigma Financial and/or Rydell. Respondents also contended that the investment in Marketplace West was not a security but rather a commercial loan.

Respondents Sigma Financial and Rydell asserted a counterclaim against Claimants for attorneys' fees and the costs of defending this action and a third-party claim against Sheen and Sheen Financial based upon the contention that Sigma Financial and Rydell have suffered greatly as a direct and proximate result of Sheen's activities, either with or without the knowledge of the Claimants, more specifically, they incurred unnecessary legal fees and costs and harm to their business reputations.

In response to the third-party claim, Sheen and Sheen Financial alleged that Sheen Financial is an inactive corporation; that Sheen Financial is not an NASD member and is no longer in business; that Sheen Financial and/or Brian Sheen have never had an arbitration agreement with Sigma Financial; that Sigma Financial and Rydell had twenty (20) days from the day they received the Statement of Claim to file a third-party claim, but that they never did so until two years later, well beyond the time allowed by NASD rules; that the third-party claim is only meant to harass as Strickland resigned from Sheen Financial in June of 1991 and was no longer working for Sheen Financial but was working with principals of Sigma Financial; that Respondents admit that Donaldson, the general partner of Marketplace West and co-salesman of the securities to Claimants, was at all times a representative of Sigma Financial; that the NASD rules are clear that Sigma Financial is completely responsible for all financial transactions by its registered representatives, whether they were through or away from the firm; and, that Sigma Financial admitted in their counterclaim that it was not until December 17, 1991 that any agreement concerning Marketplace West between Sigma Financial and Donaldson's firm, Marketplace West & Company, Inc., was canceled.

Respondent Donaldson denied all allegations of wrongdoing contained in the Statement of Claim and the Amended Claim and further contended that the applicable statutes of limitation bar the action against him in this matter. Respondent Donaldson also maintained that the transaction at issue was a loan and not a security.

Respondent Lynch denied all allegations of wrongdoing contained in the Statement of Claim and specifically denied that he had any involvement with Marketplace West.

Respondent W.S. Griffith denied all allegations of wrongdoing against it contained in the Statement of Claim and specifically denied that it had any involvement with Marketplace West or that it failed to properly supervise its registered representative, Lynch. Respondent W.S. Griffith maintained that it had no relationship with Marketplace West; that the investment was not offered, approved or sold through W.S. Griffith or through its registered representative, Lynch; that at no time did W.S. Griffith receive any commissions in connection with the sale of Marketplace West; that the investment at issue was sold to the Claimants by Strickland and Donaldson and that Strickland and Donaldson had no affiliation with W.S. Griffith but rather are registered representatives of Sigma. Respondent W.S. Griffith further maintained that it had no relationship with the Claimants and that the Statement of Claim fails to allege any activities on the part of W.S. Griffith or by its representative which relate to this claim.

### **RELIEF REQUESTED**

Claimants requested an award against the Respondents, jointly and severally, for rescissory damages in the amount of \$50,000.00 plus interest at 18%; \$50,000.00 in punitive damages for the duress and losses suffered; treble damages; reimbursement of Claimants' costs, expenses, and disbursements including reasonable attorneys' fees, the arbitration representative fees of Investment Loss Recovery Services, Inc.; and, for such other relief as the arbitration panel deemed just and proper. Claimants also requested a dismissal of the counterclaim.

Respondents Sigma Financial and Rydell requested a dismissal of the Claim and that the panel award them the fees and costs incurred by them in connection with this matter and that said costs be charged against the Claimants and the third-party Respondents Sheen Financial and Sheen as asserted in their counterclaim and third-party claims, respectively.

Respondent Donaldson requested dismissal of the claim.

Respondent Lynch requested dismissal of Claimants' claim, with prejudice, plus costs and attorney's fees.

Respondent W.S. Griffith requested that the claim be dismissed with prejudice and that its costs and attorneys' fees be assessed against the Claimants.

Third-Party Respondents Sheen and Sheen Financial requested dismissal of the third party claim against them.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. On May 30, 1997 NASD Regulation, Inc. was advised that Claimants had entered into settlement agreements with Respondents Lynch and W.S. Griffith.
2. During the hearing Respondents Sigma Financial and Rydell agreed to voluntarily dismiss the counterclaim against the Claimants and the third-party claim against Sheen and Sheen Financial if the claims against them by the Claimants were dismissed by the panel.
3. At the conclusion of the Claimants' case the Respondents made a Motion to Dismiss or for a Directed Verdict which was granted.

### **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' Motion to Dismiss is hereby granted. The panel found that the Claimants failed to prove their claims and, therefore, all claims asserted by the Claimants are hereby dismissed.

2. The panel found that the purchase at issue was a promissory note and that said promissory note is not a security pursuant to Securities & Exchange Commission v. W.J. Howey Co., 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 2d 1244 (1946).
3. The panel found that the Claimants failed to show that Thomas Strickland was an employee of Sigma Financial, Inc.
4. Based upon the representation by Respondents Sigma Financial and Rydell stated above (see "Other Issues") the counterclaim and third-party claim are hereby dismissed without prejudice.
5. Claimants' requests for punitive damages, treble damages, costs and expenses including attorneys' fees and representative fees are denied.
6. Respondents' requests for attorneys' fees and costs are denied.
7. Third-Party Respondents Sheen and Sheen Financial shall reimburse Respondent Sigma Financial the \$350.00 hearing session deposit previously paid to NASD Regulation, Inc. by Sigma Financial.

#### **FORUM FEES**

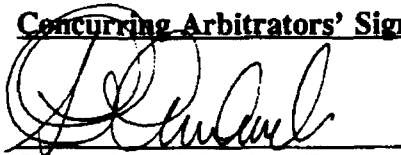
Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$7,050.00 (eight (8) hearing sessions x \$750.00 + one (1) pre hearing session with the full panel x \$750.00 + one pre hearing session with the Chairperson x \$300.00).

1. The Third-Party Respondents Sheen and Sheen Financial are jointly and severally assessed forum fees in the amount of 6,300.00, \$350.00 of which shall be paid directly to Respondent Sigma Financial (as directed above) and the remaining \$5,950.00 shall be paid to NASD Regulation, Inc.
2. The Claimants are hereby assessed forum fees in the amount of \$750.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited by Claimants in full satisfaction thereof.
3. NASD Regulation, Inc. shall retain the claim filing fees of \$200.00 and \$1,000.00 paid by the Claimants and Sigma Financial, respectively.
4. NASD Regulation, Inc. shall retain the hearing session deposit of \$350.00 paid by Sigma Financial.

Fees are payable to the NASD Regulation, Inc.

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**



Steven N. Ainbinder, Esq.

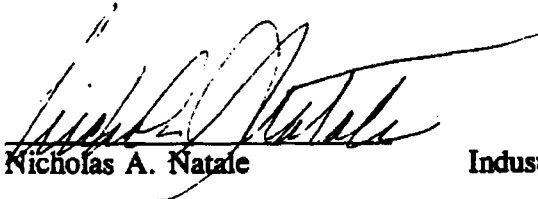
Public/Chairperson

Public/Industry



Leonard Pacun

Public/Panelist



Nicholas A. Natale

Industry/Panelist

Date of Decision: July 9, 1997