

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jesus and Gerardo Salazar

94-02272

Name of Respondents

Southwest Securities, Inc.
David Castellvi
David Wallace

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 13, 1994, Claimants Jesus and Gerardo Salazar (hereafter "Claimant"), who appeared Pro Se, alleged that Respondents David Castellvi ("Castellvi") and Southwest Securities, Inc. ("Southwest") made misrepresentations and gave him false and misleading information in order to generate excessive commissions. Claimant further alleged that he suffered a loss due to the liquidation of Commodore International. Claimant contended that he lost tax free interest from a municipal bond. Claimant further contended that Respondent Castellvi ignored his calls and "hung up" on him on several occasions. Claimant alleged that Respondents Castellvi and Southwest mislead the cost of fees and commissions, repeatedly bought and sold the same stock in order to generate high commissions, and gave Claimant "insider information". As a result of the above, Claimant contended that he has suffered damages for which the Respondents should be held liable.

Respondents Southwest Securities, Inc. and David Wallace, through Respondent Southwest Securities, Inc.'s in-house counsel Jerome S. Wade, Esq., Dallas, Texas, maintained that Claimant told Respondent David Wallace ("Wallace") that he wanted "short term profits". Respondents further maintained that of the first six trades in Claimant's account, five were profitable, and that their files do not contain letters or documents leading to a conclusion that misrepresented,

misleading or false information was created to generate excessive commissions. Respondents contended that the only stock in Claimant's account where there was repeated buying and selling was Drexler Technology, and that this stock was always sold at a profit. Respondents denied that they gave Claimant a "hot tip" or "insider information". Respondents maintained that Claimant sent in the municipal bond in question voluntarily and it was liquidated at a premium. Respondents further maintained that Claimant was always aware of all transactions and that no securities were liquidated without Claimant's specific authorization. Respondents contended that Claimant had established an unlisted telephone number without providing Respondents with the new number, making Respondents unable to communicate by phone with Claimant. Respondents further contended that Claimant did not pay for his account transactions as required by Regulation T under the Federal Reserve Board. As a result of the above, Respondents maintained that they should not be held liable in this matter.

Respondent David Castellvi, who appeared Pro Se, maintained that he never misrepresented anything to Claimant or offered him any false or misleading information. Respondent further maintained that no trades were executed in his account with the intention of simply generating a commission. Respondent contended that Claimant stated he was only interested in aggressive speculation. Respondent further contended that the only "insider information" he ever gave Claimant was the insider trading activity of the company's officers. Respondent maintained Claimant received daily confirmations and monthly statements and always knew every detail of his account. As a result of the above, Respondent contended that he should not be held liable in this matter.

RELIEF REQUESTED

Claimants Jesus and Gerardo Salazar requested \$8,000.00 in actual damages.

Respondents Southwest Securities, Inc., David Wallace and David Castellvi requested that the Claimant's Statement of Claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Douglas F. Pierce, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on June 10, 1994, by Respondent David Castellvi on September 7, 1994, and by Respondents David Wallace and Southwest Securities, Inc. on September 6, 1994.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents David Wallace, David Castellvi and Southwest Securities, Inc. are jointly and severally liable and shall pay to Claimants Jesus and Gerardo Salazar \$3,416.40 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents David Wallace, David Castellvi and Southwest Securities, Inc. are jointly and severally liable and shall pay to Claimants Jesus and Gerardo Salazar \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **DOUGLAS F. PIERCE**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION:

November 29, 1994