

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Michele J. DiFranza & Rita V. DiFranza

vs.

Award No.
94-02299

Name of Respondents

The Financial Consulting Group, Inc.
William Mobilia, Sr.

REPRESENTATION

For Claimants, Michele J. DiFranza and Rita V. DiFranza, Individually and on Behalf of the Individual Retirement accounts for Michele J. and Rita V. DiFranza ("Claimants"), Elizabeth F. Marx, Esq. and Harry S. Miller, Esq. from the law firm of Shafner & Gilleran, located in Boston, Massachusetts.

For Respondents, The Financial Consulting Group, Inc. ("FCG") and William Mobilia, Sr. ("Mobilia"), Andrea Mobilia, Esq., located in Boston, Massachusetts.

CASE INFORMATION

Statement of Claim was filed on June 16, 1994.

Claimants' Submission Agreement was signed on June 13, 1994.

Joint Statement of Answer was filed by Respondents, FCG and Mobilia on October 25, 1994.

Respondent FCG's Submission Agreement was signed on October 21, 1994.

Respondent Mobilia's Submission Agreement was signed on October 21, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	November 13, 1995	- 2 sessions
	November 21, 1995	- 1 session
	December 14, 1995	- 2 sessions
	January 24, 1996	- 2 sessions

Hearing Location: NASD offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimant commenced this arbitration to recover damages as a result of fraud, misrepresentation, breach of contract, breach of fiduciary duty, negligence, broker malpractice, broker mismanagement, unsuitable trading, and other acts on the part of Respondents.

Claimant alleged that they informed Mobilia that they wanted to invest in an absolutely safe and conservative manner and that they could not afford to lose their funds. Claimants also alleged that Mobilia assured them that he would protect their funds and plan for their retirement financial needs. Claimants further alleged that they had limited investment experience and told Mobilia that they were relying upon him to manage their accounts.

Claimants contend that Mobilia placed their funds in unsuitable investment vehicles such as speculative limited partnerships. Claimants also contend that Mobilia failed to disclose the risks inherent in such investments or the extremely lucrative fees and commissions that FCG received. Claimants further contend that FCG failed to adequately supervise Mobilia and that both Respondents misrepresented the trading and status of their accounts.

Respondents denied the allegations of wrongdoing, that Mobilia "managed the account" and denied liability. Respondents asserted ten affirmative defenses which also included defense that the claims are barred by Section 15 of the NASD *Code of Arbitration Procedure* ("*Code*"). Respondent Mobilia stated that he informed Claimants that it would be difficult to achieve their stated income objective of \$30,000.00 per year upon retirement and he suggested a "leveraged approach" if they were comfortable with it.

RELIEF REQUESTED

Claimants requested an award of \$100,000.00 in compensatory damages or such additional amount as may be shown at the hearing, punitive damages in an amount as the panel deems appropriate, market-adjusted damages; interest, attorneys fees and costs.

Respondents requested that the panel dismiss the Statement of Claim in its entirety, award Respondents all costs and fees associated with the defense of this matter and such other relief as the panel deems just and reasonable.

OTHER ISSUES CONSIDERED & DECIDED

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

Prior to the hearing the Director of Arbitration determined that the claims eligible for arbitration were those that occurred on or after June 16, 1988. This determination was made in connection with Respondents Motion to Dismiss pursuant to Section 15 of the *Code*. This panel confirmed that decision. At the hearing on November 21, 1995, Respondents moved for a directed verdict at the close of Claimants' case. After hearing arguments and Claimants' position that they also had additional evidence to present, the panel requested that the parties file briefs on the issue. The panel allowed Claimants to present additional evidence.

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. All claims are denied as Claimants failed to prove material misrepresentations within the eligibility period pursuant to Section 15 of the *Code* or at the December 20, 1990 meeting.

FORUM FEES

Pursuant to Section 43(c) the *Code*, the following Forum Fees are assessed and shall be borne equally by the parties.

Non-refundable Filing Fees: \$150.00

Hearing Session Fees: \$3,500.00 (7 sessions @ \$500.00 per session)

Total Fees: \$3,650.00

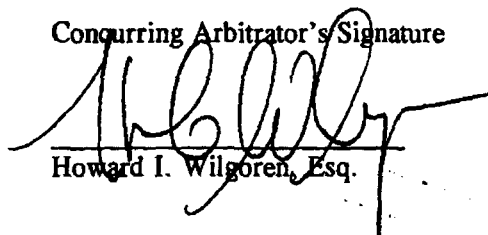
1. Claimants previously paid \$1,150.00 and owe a balance of \$675.00.
2. Respondents owe \$1,825.00.

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

ARBITRATION PANEL

Howard I. Wilgoren, Esq.	-	Public Chairperson
Richard Chapin	-	Public Panelist
Richard D. Jordan	-	Industry Panelist

Concurring Arbitrator's Signature



Howard I. Wilgoren, Esq.

NASD's Date of Decision: March 18, 1996

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