

N.A.S.D. AWARD

IN THE MATTER OF THE ARBITRATION BETWEEN

**STANLEY E. GATELY, CATHERINE GATELY and STANLEY E. GATELY
AS TRUSTEE of the ARKANSAS VALLEY ANESTHESIA ASSOCIATES,
P.A. PROFIT SHARING PLAN**

and

NO. 95-00009

WILLIAM JOSEPH GALANTE

REPRESENTATION

Stanley E. Gately, Catherine Gately and Stanley E. Gately as Trustee of the Arkansas Valley Anesthesia Associates, P.A. Profit Sharing Plan ("Claimants") were represented by Roger D. Rowe, Wright, Lindsey & Jennings, 200 West Capitol Avenue, Suite 2200, Little Rock, Arkansas 72201.

William Joseph Galante ("Respondent") did not enter an appearance either personally or through counsel.

CASE INFORMATION

The Statement of Claim was filed on or about December 30, 1994.

The Claimants', Stanley E. and Catherine Gately Submission Agreement was executed on December 22, 1994.

Respondent, William Joseph Galante did not file a Statement of Answer or Submission Agreement.

HEARING INFORMATION

The hearing was held in Little Rock, Arkansas on March 7, 1996 for one (1) hearing session.

CASE SUMMARY

The Claimants, Stanley E. Gately, Catherine Gately and Stanley E. Gately as Trustee of the Arkansas Valley Anesthesia Associates, P.A. Profit Sharing Plan initiated this arbitration proceeding by the filing of a Statement of Claim on December 30, 1994 against Respondent, William Joseph Galante ("Galante") and Prudential Securities, Inc. ("Prudential"). Prior to the arbitration hearing, the Claimants resolved their claims against Prudential Securities through a confidential settlement agreement. All issues pertaining to Prudential Securities and the claims of the Profit Sharing Plan were resolved or moot by the date of the hearing.

With respect to Respondent Galante, the Claimants alleged that Galante violated the securities fraud provisions of the Arkansas Securities Act, Ark. Code Ann. § 23-42-106 (1987), committed the tort of deceit under Arkansas law, breached fiduciary duties by failing to exercise good faith in carrying out the responsibilities of a broker and agent and otherwise acting in the best interest of his customers, committed constructive fraud while acting in a fiduciary capacity, and acted negligently by failing to exercise good faith and reasonable care in carrying out his responsibilities as a licensed broker of securities.

The Claimants' claims arose from the purchase by Galante for the Claimants' account of two promissory notes purportedly issued by Inergy Corporation. The first note, in the principal amount of \$50,000, was purchased by Galante for the account of the Claimants on January 10, 1991. The second note, in the principal amount of \$30,000, was purchased by Galante for the account of the Claimants on April 23, 1991. Galante represented to the Claimants that Inergy Corporation was "Entergy" Corporation, the parent of Arkansas Power & Light Company. Inergy Corporation instead was a start-up venture capital company that had become inactive and insolvent by December 31, 1993.

RELIEF REQUESTED

The Claimants sought the principal amount paid for the promissory notes or \$80,000, pre-judgment and post-judgment interest, and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties present at the hearing agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties present at the hearing agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Upon review of the file and the representations made by/on behalf of the Claimants, the panel determined that Respondent, William Joseph Galante had been properly served with the Statement of Claim pursuant to Section 13 and Section 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent, William Joseph Galante had received due notice of the hearing as required under Section 26 of the Code and that arbitration of the matter would proceed pursuant to Section 29 of the Code.

Respondent, William Joseph Galante did not file with the NASD a properly executed submission to arbitration or appear at the hearing but is required to submit to arbitration in accordance with Section 12 of the Code.

After reviewing and considering the Claimants' Motion for Leave to File an Amendment to the Claim, the panel decided to grant the Motion on or about January 5, 1996.

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. Respondent, William Joseph Galante is hereby liable for and shall pay to the Claimants, Stanley E. and Catherine Gately and Stanley E. Gately as Trustee of the Arkansas Valley Anesthesia Associates, P.A. Profit Sharing Plan the lump sum of \$83,000.00 which includes actual damages, interest and costs of arbitration including attorneys' fees. In determining to award attorneys' fees, the arbitrators considered the pleadings, the testimony and the evidence provided by the Claimants;
2. Any or all other relief not specifically granted is hereby denied in its entirety; and
3. The parties shall bear their own costs except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session. There was one (1) hearing session x \$400.00 = \$400 in forum fees. Pursuant to Section 43(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s) which lasts four hours or less.

Pursuant to Section 43(c) of the Code, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$100 and the hearing session

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deposit in the amount of \$400. Respondent, William Joseph Galante is hereby liable for and shall pay to the Claimants, Stanley E. and Catherine Gately and Stanley E. Gately as Trustee of the Arkansas Valley Anesthesia Associates, P.A. Profit Sharing Plan the sum of \$500.00 as reimbursement. The NASD shall also retain the \$200 member surcharge assessed against Prudential Securities, Inc. pursuant to Section 45 of the Code.

Signed:

Dated:

Thomas F. Digby, Jr., Esq.
Thomas F. Digby, Jr., Esq.
Public Arbitrator, Chairman

April 22, 1996

Charles C. Sisney
Charles C. Sisney
Public Arbitrator, Panelist

April 6, 1996

James Stephen Jones
James Stephen Jones
Industry Arbitrator, Panelist

April 4, 1996

Date served by the NASD: April 25, 1996