

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

James R. Trayner

Claimant,

v.

No. 95-01880

**U.S. Investments, Inc., Sherry D. Criscogriffen,
Steven C. Gunn, and Rocky L. Griffen**

Respondents.

REPRESENTATION OF PARTIES

Claimant James R. Trayner, et al. was represented by Richard G. Himelrick of Byrnes & Himelrick, P.L.L.C. located in Scottsdale, AZ.

Respondent U.S. Investments, Inc. was represented by Charles M. Hamilton of French & Hamilton located in Dallas, TX.

Respondent Sherry D. Criscogriffen was represented by Charles M. Hamilton of French & Hamilton located in Dallas, TX.

Respondent Steven C. Gunn was represented by Charles M. Hamilton of French & Hamilton located in Dallas, TX.

Respondent Rocky L. Griffen was represented by Charles M. Hamilton of French & Hamilton located in Dallas, TX.

CASE INFORMATION

Claimant James R. Trayner's Statement of Claim was filed on or about April 19, 1995.

Claimant James R. Trayner's Submission Agreement was signed on April 10, 1995.

Respondent U.S. Investments, Inc.'s Statement of Answer was filed on or about June 21, 1995.

Respondent U.S. Investments, Inc.'s Submission Agreement was signed on May 15, 1995 by Sherry D. Criscogriffen, President of U.S. Investments, Inc.

Respondent Sherry D. Criscogriffen's Statement of Answer was filed on or about June 21, 1995.

Respondent Sherry D. Criscogriffen's Submission Agreement was signed on May 15, 1995.

Respondent Steven C. Gunn's Statement of Answer was filed on or about June 21, 1995.

Respondent Steven C. Gunn's Submission Agreement was signed on May 15, 1995.

Respondent Rocky L. Griffen's Statement of Answer was filed on or about June 21, 1995.

Respondent Rocky L. Griffen's Submission Agreement was signed on May 15, 1995.

HEARING INFORMATION

A prehearing conference was held on February 19, 1996 for one (1) session.

The hearing was held on: July 8, 1996 for two (2) sessions; July 9, 1996 for two (2) sessions; July 10, 1996 for two (2) sessions; and July 11, 1996 for two (2) sessions in Phoenix, AZ for a total of 8 sessions.

CASE SUMMARY

Claimant James R. Trayner ("Claimant") alleged that he was incapable of understanding the risk involved with investing in Respondent U.S. Investments, Inc.'s ("U.S. Investments") prospective oil wells. Claimant further alleges that Respondents Sherry D. Criscogriffen ("Criscogriffen"), Steven C. Gunn ("Gunn"), and Rocky L. Griffen ("Griffen") (collectively referred to herein as "Respondents") took advantage of his disabilities by representing the investments in the oil wells as safer than they were and by recommending this type of investment to Claimant. Claimant presents six legal theories for recovery: (1) Respondents' recommendations violated the suitability standards for direct investment programs as stated in § 34, Art. III of the NASD's Rules of Fair Practice; (2) Respondents breached their fiduciary duty to Claimant; (3) Respondents were negligent in persuading Claimant to make unsuitable investments; (4) Respondents violated A.R.S. §§ 44-1991(2), 44-1991(3) by making misleading statements about the safety and return of speculative investments to Claimant, who is a disabled person; (5) Respondents violated A.R.S. § 13-2301(D)(4)(s), which is the reckless sale of unregistered securities; and (6) U.S. Investments had a duty to supervise its sales personnel and as a result of the breach of this duty Claimant was damaged.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant was able to appreciate the risks involved, that Claimant participated in a joint venture referred to as a partnership and that such partnerships are not securities for the purposes of securities laws, and that Claimant has not been damaged due to revenue payments from the partnership that he has already received and due to the potential tax breaks available to him. Respondents asserted the following affirmative defenses: (1) statute of limitations; (2) estoppel; (3)

lack of justifiable reliance; (4) Respondents at all times acted in good faith; (5) waiver; (6) parol evidence rule; (7) offset; and (8) the arbitrators are not empowered to award punitive damages and, even if awardable, punitive damages are not called for by the facts of this case.

RELIEF REQUESTED

Claimant requested an award in the amount of \$137,399 plus prejudgment interest, costs, reasonable attorney's fees, treble damages, \$500,000 in punitive damages, and damages for emotional distress. Claimant also made a request for a disciplinary referral.

Respondents requested that the Statement of Claim be denied in its entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

(1) That Respondents U.S. Investments, Inc., Sherry D. Criscogriffen, Steven C. Gunn, and Rocky L. Griffen are jointly and severally liable for and shall pay to the Claimant \$136,000 in actual damages, and \$42,000 in statutory pre-judgment interest which shall accrue until paid;

(2) That Respondents U.S. Investments, Inc., Sherry D. Criscogriffen, Steven C. Gunn, and Rocky L. Griffen are jointly and severally liable for and shall pay to the Claimant \$50,000 in punitive damages;

(3) That Respondents U.S. Investments, Inc., Sherry D. Criscogriffen, Steven C. Gunn, and Rocky L. Griffen are jointly and severally liable for and shall pay to the Claimant \$1,250 in costs; and

(4) That other than forum fees, which are addressed below, all other requests for relief for claims not specifically set fourth herein are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There was one prehearing session x \$300 = \$300 and eight hearing sessions x

\$1,000 = \$8,000. Total forum fees are \$300 + \$8,000 = \$8,300. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a prehearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$500 previously paid by Respondents U.S. Investment, Inc.

Additional forum fees in the amount of \$6,300 (\$6,550 less \$250 overpayment for member surcharge) are assessed joint and several against Respondents U.S. Investments, Inc., Sherry D. Criscogriffen, Steven C. Gunn, and Rocky L. Griffen.

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

Dated:

Glenn C. Johnson
Glenn C. Johnson, Esq.
Public Arbitrator, Presiding Chair

/s/

July 30, 1996

George N. Roy
George N. Roy, CPA
Public Arbitrator

/s/

July 24, 1996

William L. Olson
William L. Olson
Industry Arbitrator

/s/

July 22, 1996