

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Don A. Moore and Katherine Moore,

Claimants,

and

No. 95-02876

C. Reed Carr, Aragon Financial Services, Inc.,
Douglas Lyman Lish, and Robert Lane Myer,

Respondents,

REPRESENTATION OF PARTIES

Claimants Don A. Moore and Katherine Moore were represented by Walter T. Weathers, Jr., Esquire of Houston, Texas.

Respondents C. Reed Carr, Aragon Financial Services, Inc., Douglas Lyman Lish, and Robert Lane Myer were represented by J. Eugene Clements, Esquire of Clements, O'Neill, Pierce & Nickens located in Houston, Texas.

CASE INFORMATION

Don A. Moore and Katherine Moore's Statement of Claim was filed on or about June 13, 1995. Don A. Moore and Katherine Moore's Amended Statement of Claim was filed on or about March 8, 1996. Don A. Moore and Katherine Moore's Submission Agreement was signed in June 1995.

C. Reed Carr and Aragon Financial Services, Inc.'s Statement of Answer was filed on or about July 31, 1995. C. Reed Carr and Aragon Financial Services, Inc.'s Amended Statement of Answer and Douglas Lyman Lish and Robert Lane Myer's Statement of Answer was filed on or about May 28, 1996. C. Reed Carr's Submission Agreement was signed on July 13, 1995. Aragon Financial Services, Inc.'s Submission Agreement was signed on July 25, 1995 by Douglas L. Lish, President of Aragon Financial Services, Inc. The NASD Regulation, Inc. Office of Dispute Resolution has no record of a signed agreement to submit to arbitration from either Douglas Lyman Lish or Robert Lane Myer.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: October 8, 1996 for three (3) sessions;
 October 9, 1996 for two (2) sessions;
 October 28, 1996 for three (3) sessions; and
 December 30, 1996 for two (2) sessions.

The hearing was held in Houston, Texas.

CASE SUMMARY

Claimants Don A. Moore ("Mr. Moore") and Katherine Moore (hereinafter collectively referred to as "Claimants") alleged that respondent C. Reed Carr ("Mr. Carr"), who was their broker at Aragon Financial Services whose director was Robert Lane Meyer and whose president was Douglas Lyman Lish, made omissions and misrepresentations of material facts and made unsuitable investments in Mr. Moore's individual retirement account ("IRA"). Claimants stated that the following investments were made on their behalf by Mr. Carr, who represented these investments as having a very moderate risk:

<u>Investment</u>	<u>Amount</u>
St. Louis Leasing, Arch Fund 994i and Arch Fund 1094ix	\$ 250,000.00
Continental Capital Income Fund II	100,000.00
Real Estate Partnerships (approximately 37% of the total IRA):	
Continental Capital	100,000.00
TMP Interstate	150,000.00
Emerald Pointe	50,000.00
Computer Equipment Leasing Ltd Partnerships (approximately 30% of the total IRA)	250,000.00
GT Global Funds (approximately 24% of the total IRA)	198,000.00
Life Partners (approximately 9% of the total IRA)	70,946.00

Claimants asserted that these investments were unsuitable in light of their investment objectives of preservation of capital and income and that Mr. Carr knew that they had no knowledge of this type of investment activity and were relying on him to determine the suitability of the investments. Claimants further asserted that Mr. Carr recklessly made misrepresentations including the nature of the risk. Claimants argued that they have been damaged as a proximate result of these acts, omissions, and misrepresentations. Claimants made the following legal claims: (1) violations of the Texas Deceptive Trade Practices-Consumer Protection Act; (2) violations of federal and state security statutes; (3) common law fraud; (4) statutory fraud; (5) breach of fiduciary duties; (6) negligence; (7) failure to supervise; and (8) breach of contract.

Respondents Mr. Carr, Aragon Financial Services, Inc., Douglas Lyman Lish, and Robert Lane Myer (hereinafter collectively referred to as "Respondents") denied the allegations set forth in the Statement of Claim. Respondents stated that all of Claimants investments have performed as expected except for two. Respondents claimed that they made a reasonable investigation of the investments at issue before recommending them to their customers, that the nature of the investments were adequately and accurately disclosed to Claimants, that the investments met Claimants' investment objectives and were suitable, and that the losses are directly related to actions by the principals of the two investments that have not performed as expected. In addition, Respondents made the following affirmative defense: Claimants' claims are barred by the doctrines of ratification, waiver, estoppel, and assumption of the risk.

RELIEF REQUESTED

Claimants Don A. Moore and Katherine Moore requested an award for: compensatory damages in an amount of at least \$400,000.00; the rescission of the purchase of TMP Interstate, Emerald Pointe, and Life Partners, which they still hold; statutory damages under the laws of the State of Texas; costs and attorney fees based on violations of the Texas Deceptive Trade Practices-Consumer Protection Act, statutory fraud, and breach of contract; punitive damages; costs, expenses, disbursements, expert fees and other expenses, including attorney fees associated with this arbitration proceeding; pre-award and post-award interest; and costs and attorney fees for a Motion to Confirm or for any appeal or attempt to set aside the arbitration award.

Respondents C. Reed Carr, Aragon Financial Services, Inc., Douglas Lyman Lish, and Robert Lane Myer requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorney fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Douglas Lyman Lish and Robert Lane Myer did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submissions to arbitration but are required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The parties have 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 have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That the TMP Interstate, Emerald Pointe, and Life Partners investments, which are still held by claimants Don A. Moore and Katherine Moore, are hereby ordered rescinded;
2. That respondents C. Reed Carr and Aragon Financial Services, Inc. are jointly and severally liable for and shall pay claimants Don A. Moore and Katherine Moore compensatory damages in the amount of \$600,000;
3. That respondents C. Reed Carr and Aragon Financial Services, Inc. are jointly and severally liable for and shall pay claimants Don A. Moore and Katherine Moore punitive damages in the amount of \$100,000;
4. That respondents C. Reed Carr and Aragon Financial Services, Inc. are jointly and severally liable for and shall pay claimants Don A. Moore and Katherine Moore attorney fees in the amount of \$195,000 pursuant to the Texas Deceptive Trade Practices-Consumer Protection Act, statutory fraud, and breach of contract;
5. That respondents C. Reed Carr and Aragon Financial Services, Inc. are jointly and severally liable for and shall pay claimants Don A. Moore and Katherine Moore for expert witness fees in the amount of \$5,000 pursuant to the Texas Deceptive Trade Practices-Consumer Protection Act, statutory fraud, and breach of contract; and
6. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were ten (10) hearing sessions \times \$750 = \$7,500 in forum fees. Pursuant to §10332(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 pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing

session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Don A. Moore and Katherine Moore.

Aragon Financial Services, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the non-refundable member surcharge pursuant to §10333 of the Code in the amount of \$350.

Aragon Financial Services, Inc. and C. Reed Carr are jointly and severally liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$6,750 (= \$7,500 total forum fees - \$750 hearing session deposit by Don A. Moore and Katherine Moore).

Aragon Financial Services, Inc. and C. Reed Carr are jointly and severally liable for and shall reimburse claimants Don A. Moore and Katherine Moore for their hearing session deposit in the amount of \$750.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated: _____

A. Bentley Nettles, Esquire
Public Arbitrator, Presiding Chair

Richard R. Nelson, Jr.
Public Arbitrator

Eli Bensky
Industry Arbitrator