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NASD AWARD.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

John Palmisano,
Claimant,

v.

No. 95-03 118

Ronald B. Adrian,
*VSR Financial Services, Inc., and
Rogers & Adrian, Inc.,
Respondents.

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REPRESENTATION OF PARTIES

John Palmisano ("Claimant") was represented by Henry F. Sondag, Jr., Esq., of Holbrook, Heaven & Fay, P.A., Kansas City, Kansas.

Ronald B. Adrian ("Adrian"), and VSR Financial Services, Inc. ("VSR") (collectively referred to as "Respondents") were represented by J. Michael Dryton, Esq., of VSR Financial Services, Inc., Leawood, Kansas.

Rogers & Adrian, Inc. did not participate in the arbitration.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about June 23, 1995. Claimant's Submission Agreement was signed on June 23, 1995.

Respondent Adrian's and VSR's joint Statement of Answer was filed on or about August 22, 1995. Respondents' Submission Agreements were signed on August 22, 1995.

HEARING INFORMATION

A telephonic **pre-hearing** conference was held on April 22, 1996 for one (1) session.

The hearing was held on June 3 and 4, 1996 for two (2) sessions each day in Kansas City, Missouri for a total of four (4) sessions.

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CASE SUMMARY

Claimant alleged that Respondents: Made. an unsuitable investment; made misrepresentations concerning the investment; breached their fiduciary duty; and were negligent. Claimant further alleged that Adrian: Never informed him that the Master Mortgage Investment Fund, Inc. contained stocks that were not listed on any market; never informed him that the stocks had no such market at the time of the investment; and never informed him that the fund was illiquid.

Respondents denied the allegations set forth in the Statement of Claim. Respondents also asserted the following defenses: Claimant's claims are barred by the applicable statute of limitations; Claimant's fraud claims cannot be based on future facts; any damages which Claimant may have suffered are not attributable to any of the Respondents, but are the result of the negligence of other persons over whom Respondents had no control; Respondents were not fiduciaries to the Claimant; and Claimant's claim is barred by Section 15 of the NASD Code of Arbitration Procedure.

RELIEF REQUESTED

Claimant requested that he be compensated in the amount of \$43,534.57.

Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs incurred, and for such further relief as is just and equitable.

OTHER ISSUES CONSIDERED & DECIDED

Rogers and Adrian, Inc. is not a member of the NASD, nor is it a person associated with an NASD member. Rogers and Adrian, Inc. refused to submit to this forum. Rogers and Adrian, Inc. was not included as a Respondent in the hearing.

At the commencement of the hearing, Respondents' counsel presented a motion for dismissal of the Claimant's action because of the applicable statute of limitations. After hearing argument from the parties, and deliberation, the panel decided that the motion was to be taken under advisement until the completion of the **evidentiary** portion of the arbitration. The panel decided at the completion of the hearing that given the award rendered herein, the motion is moot and does not require a disposition.

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:

Claimant's claims are, and each of them, denied with prejudice.

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Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. **There were** four (4) regular sessions x \$400 and one (1) pre-hearing session x \$300 = \$1,900 in forum fees. 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 pre-hearing 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 \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, VSR is liable for and shall pay to the NASD a member surcharge fee in the amount of \$200.

Additional forum fees in the amount of \$234 are assessed against the Claimant.

Additional forum fees in the amount of \$633 are assessed against VSR.

Additional forum fees in the amount of \$633 are assessed against Adrian.

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

Dated:

John H. Lungren
John H. Lungren
Public Arbitrator, Presiding Chair

/s/

July 22, 1996

Sidney P. Keltner
Sidney P. Keltner
Public Arbitrator

/s/

July 25, 1996

Susan R. Schrag
Susan R. Schrag
Industry Arbitrator

/s/

July 19, 1996