

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

In the Matter of the Arbitration Between

Name of Claimant

Martini & Assoc. Ltd. Profit Sharing Plan

95-04630

Name of Respondents

Capital Analysts Inc.

REPRESENTATION

Claimant Martini & Associates Ltd. Profit Sharing Plan ("Claimant") was represented by Brian P. Murphy, Esq. of the law firm of Griffin, Berenson & Murphy, Washington, D.C.

Respondent Capital Analysts Inc. ("Respondent") was represented by David M. Young, Esq. of the law firm of McGuireWoods Battle & Boothe, LLP, Washington, D.C.

CASE INFORMATION

Statement of Claim filed: September 29, 1995.

Louis F. Martini, President executed the Submission Agreement on behalf of Claimant on: October 26, 1995.

Statement of Answer filed by Respondent on: August 19, 1996.

Respondent's Submission Agreement signed on: August 13, 1996.

HEARING INFORMATION

No hearings were conducted in this matter as this case was decided on Respondent's Motion filed prior to hearing.

CASE SUMMARY

Claimant alleged, among other things, that Respondent provided Claimant with improper investment advice and services. Claimant alleged that Respondent managed the investment policy for Claimant and that Respondent in May 1989 invested \$40,000 into Racon VI Real Estate Investment. Claimant alleged that Respondent was to invest in investments that were conservative in nature. Claimant alleged that the complaint was not based solely on bad investment advice on the purchase of the securities but that the claim was based on the continuing investment advisory services. Claimant maintained that its claim was appropriate for equitable tolling, since among other things, the Claimant was relying upon Respondent for

professional advice and respondent was in a position to influence the vigilance of Claimant.

Respondent maintained that Claimant opened an account with Respondent but that Claimant made no complaint to anyone at Respondent. Respondent maintained that Claimant's claim does not contain a single allegation of wrongdoing on the part of Respondent. Respondent maintained that Claimant fails to allege a violation of any law or regulation. Respondent maintained that Claimant is merely a disappointed investor whose complaint is based on the performance of an investment, which is not actionable. Respondent maintained that even if Claimant's generalized allegation that it received "bad advice" was correct, the claim does not state a cause of action.

Respondent submitted a Motion to Dismiss the Statement of Claim asserting, among other things, 1) that Claimant's claim arises outside the six year period allowed under Rule 10304 (formerly Section 15) of the NASD Regulation Code of Arbitration Procedure ("Code") and is barred by Rule 10304 and 2) that Claimant's claim fails to state a claim against Capital Analyst. Respondent further asserted that Rule 10304 of the Code is a jurisdictional eligibility rule, not a statute of limitations, and is not subject to equitable tolling.

RELIEF REQUESTED

Claimant requested damages in an amount of \$40,000 plus interest at any amount that seems reasonable to the Arbitrators.

Respondent requested that Claimant's claim be dismissed in its entirety and that its Motion to Dismiss be granted.

OTHER ISSUES CONSIDERED & DECIDED

The panel of arbitrators ("Panel") reviewed and considered Respondent's Motion to Dismiss, Claimant's Opposition to the Motion to Dismiss and Respondent's reply to Claimant's Opposition to the Motion to Dismiss prior to the hearing on the merits. The Panel determined that the arguments had been fully articulated in the papers and the Panel made its decision based on the papers filed.

The Panel on September 30, 1996 notified the parties that the Respondent's Motion to Dismiss had been granted, that a hearing on the merits was not needed and that a signed award would be served on the parties at a later date.

AWARD

After considering the pleadings, and the motions filed in this matter, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent's Motion to Dismiss is granted and that Claimant's claim is dismissed in its entirety.
2. That the parties shall bear their respective costs including attorneys' fees.

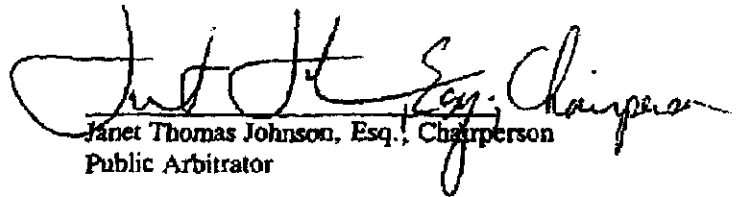
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3. No further forum fees or costs are assessed in this matter.

Date Award Signed

1-3-97

Concurring Arbitrators' Signatures


Janet Thomas Johnson, Esq., Chairperson
Public Arbitrator

Patrick Sean Dolan - Panelist
Public Arbitrator

Judy K. Smith - Panelist
Industry Arbitrator

Date Award Served by the NASD Regulation:

January 6, 1997

3. No further forum fees or costs are assessed in this matter.

Date Award Signed

Concurring Arbitrators' Signatures

Janet Thomas Johnson, Esq., Chairperson
Public Arbitrator

12/30/96

Patrick Sean Dolan - Panelist
Public Arbitrator

Judy K. Smith - Panelist
Industry Arbitrator

Judy K. Smith - Panelist
Industry Arbitrator

Date Award Served by the NASD Regulation:

January 6, 1997

3. No further forum fees or costs are assessed in this matter.

Date Award Signed

Concurring Arbitrators' Signatures

Janet Thomas Johnson, Esq., Chairperson
Public Arbitrator

Patrick Sean Dolan - Panelist
Public Arbitrator

12/21/96

Judy K. Smith

Judy K. Smith - Panelist
Industry Arbitrator

January 6, 1997
Date Award Served by the NASD Regulation:

January 6, 1997