

9812006

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

**E. Carl Anderson, Jr.
a/k/a Carl Anderson**

95-04681

Names of Respondents

**Jonathan Alan & Company, Inc.
f/k/a First Associated Financial Group, Ltd.
Thomas L. DePetrillo
Mitchel Feinglas
Timothy I. Flanagan**

REPRESENTATION

For Claimant E. Carl Anderson, Jr. a/k/a Carl Anderson ("Anderson"): Burton W. Wiand, Esq. of Fowler, White, Gillen, Boggs, Villacal and Banker, P.A., Tampa, Florida.

For Respondents Jonathan Alan & Co., Inc. f/k/a First Associated Financial Group, Ltd. ("JACF"), Thomas L. DePetrillo ("DePetrillo"), and Mitchel Feinglas ("Feinglas"): Raymond L. Vandenberg, Esq. of Vandenberg & Felin, LLP, New York, New York.

For Respondent Timothy J. Flanagan ("Flanagan"): Michael C. Addison, Esq., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed October 3, 1995. Answer to Respondents' Counterclaim filed January 25, 1996. Amended statement of Claim filed January 29, 1997. Claimant's Submission Agreement signed by Anderson on September 28, 1995.

Respondents JACF's, DePetrillo's, Feinglas', and Flanagan's Answer to the Statement of Claim and Counterclaim filed on January 2, 1996. Respondents JACF, DePetrillo, Feinglas, and Flanagan did not file executed Submission Agreements.

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HEARING INFORMATION

On February 12, 1997, a telephonic pm-hearing conference lasting one (1) session was conducted with the arbitration panel (the "Panel"). On February 27, 1997, April 17, 1997 and May 1, 1998, telephonic pre-hearing conferences lasting a total of three (3) sessions were conducted with the Chairperson of the Panel. On June 16, 17, 18, 19, and October 19, 20, 21, 22, and 23, 1998, in Tampa, Florida, hearings lasting eighteen (18) sessions were conducted with the Panel.

CASE SUMMARY

Claimant alleged that this claim arose from the purchase by the Claimant of a significant portion of JACI and alleged misconduct of JACI and its principal shareholders and officers in connection with that transaction and in connection with their continued operation of the business. The Claimant further alleged fraud, breach of fiduciary duty, violation of the Securities Exchange Act of 1934, breach of contract and violation of New York State Business Corporation Law. Claimant requested compensatory damages in the amount of his investment, as well as damages due to the failure of the Respondents to provide him with dissenter's rights and the appraisal value of his equity interest in JACI when Depetrillo, Feinglas, and Flanagan caused JACI to sell substantially all of its business to another brokerage firm. Claimant requested punitive damages as a result of the willful and wanton activities on the part of the Respondents and sanctions for the alleged misconduct during the discovery and prehearing procedures.

Respondents JACI, DePetrillo and Feinglas asserted the following: that the Claimant is a sophisticated businessman who invested in high-risk ventures for a number of years prior to his JACI investment; Claimant and Respondents invested together in several companies promoted by Claimant and controlled by him; the statute of limitations bars Claimant's statutory fraud claims; Claimant was represented by a CPA/attorney and executed his contract to purchase JACI stock after several days of negotiations; JACI did not breach any of the terms of its contract with Claimant; there was no evidence of any improper or illegal transfer of the corporate assets of JACI; there is no basis for an award of sanctions against Respondents as discovery was fully provided as ordered by the Court and the Panel; there is no basis in law or in fact for an award of punitive damages; and, the claims should be dismissed and Respondents should be awarded their attorneys' fees in accordance with their counterclaim because Claimant filed this claim without any legal justification and has caused Respondents damage to their professional reputations.

Respondent Flanagan further alleged that he was not personally liable for any alleged breach of contract by JACI and sold his stock in JACI in June of 1990.

RELIEF REQUESTED

Claimant requested an award against Respondents of compensatory damages in the amount of his investment, damages due to the failure of Respondents to provide dissenter's rights and the appraised value of his equity interest in JACI, reasonable costs and attorney's fees associated with bringing and prosecuting this action, interest at the rate set forth in Sec. 55.03 of the Fl. Stat. (1995), and punitive damages. Claimant further requested sanctions and a dismissal of Respondents' counterclaim.

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Respondents requested a dismissal of the claim in its entirety with prejudice; that the Panel grant such other, further and different relief as it deemed just and proper; and a dismissal of Claimant's request for sanctions. Respondents further requested damages on their counterclaim that included reimbursement of their attorneys' fees, costs and expenses incurred in defense of the claim, as well as any damages suffered as a result of the claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the evidentiary hearing 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 present at the hearing have agreed to receive conformed copies of the Award while the originals remain on file with the NASD Regulation, Inc., Office of Dispute Resolution.

After the June 1998 evidentiary hearings, but prior to the October 1998 evidentiary hearings, Arbitrator Richard I. Funky passed away. The parties agreed to continue through completion of the arbitration proceedings with the remaining two panel members.

Respondents JACI, DePetrillo, Feinglas, and Flanagan, did not file with the NASD Regulation, Inc., Office of Dispute Resolution properly executed submissions to arbitrate but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the Arbitration Panel on all issues submitted.

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. Respondents JACI and Feinglas are found jointly and severally liable and shall pay to the Claimant the amount of \$235,600.00 in compensatory damages.
2. Respondents JACI and DePetrillo are found jointly and severally liable and shall pay to the Claimant the amount of \$58,900.00 in compensatory damages.
3. Respondents JACI and Flanagan are found jointly and severally liable and shall pay to the Claimant the amount of \$2,500.00 in compensatory damages.
4. Respondents JACI, Feinglas, DePetrillo, and Flanagan are found jointly and severally liable and shall pay to the Claimant his attorney's fees in an amount to be determined by a court of competent jurisdiction pursuant w Sec. 517.211 of the FL Stat.
5. Claimant's requests for damages due w the failure of Respondents to provide dissenter's rights and the appraised value of his equity interest in JACI are hereby denied.
6. Claimant's requests for costs, interest, punitive damages, and sanctions are hereby denied.

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7. Respondents' counterclaim is denied in its entirety and is hereby dismissed.

8. Respondent Feinglas is liable and shall pay to Claimant the sum of \$750.00 representing reimbursement of the hearing session deposit previously paid by the Claimant to NASD Regulation, Inc.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$15,150.00 (18 hearing sessions x \$750.00, plus 1 pre-hearing conference with the Panel x \$750.00 and 3 pre-hearing conferences with the Chairperson x \$300.00) as follows:

- 1) \$7,575.00 is assessed against the Claimant;
- 2) \$5,984.25 is assessed against Feinglas;
- 3) \$1,515.00 is assessed against DePetrillo; and,
- 4) \$75.75 is assessed against Flanagan for which NASD Regulation, Inc. shall retain the \$75.75 previously deposited by Flanagan in full satisfaction thereof.

OTHER FEES

AWARD

Pursuant to Rule 10332(a) of the Code, Claimant has paid to NASD Regulation, Inc. the amount to Rule 10332(a) \$200.00 claim filing fee.

Pursuant to Rule 10333 of the Code, Respondent JACI has paid to NASD Regulation, Inc. the amount to Rule 10333(a) \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10332 of the Code, Respondents have paid to NASD Regulation, Inc. the amount to Rule 10332(a) \$500.00 counterclaim filing fee.

Pursuant to Rule 10319 of the Code, Claimant is assessed the sum of \$1,375.00, representing their portion of the adjournment fee (\$375.00) for the scheduled hearing sessions on November 11, 1996 and the second adjournment fee (\$1,000.00) for the scheduled hearing sessions on March 11, 1997. NASD Regulation, Inc. shall retain the Claimant's \$750.00 hearing session deposit and a previously deposited adjournment fee of \$300.00 in partial satisfaction thereof leaving a balance due of \$325.00.

pursuant to Rule 10319 of the Code, Respondents are assessed, jointly and severally, the sum of \$375.00, representing their portion of the adjournment fee (\$375.00) for the scheduled hearing sessions on November 11, 1996. NASD Regulation, Inc. shall retain Respondent Flanagan's \$375.00 adjournment fee deposit in full satisfaction thereof.

Pursuant to Rule 10319 of the code, Respondent Flanagan is assessed the sum of \$1,000.00, representing the second adjournment fee (\$1,000.00) for the scheduled hearing sessions on May 4, 1998 for which NASD Regulation, Inc. shall retain Flanagan's \$1,000.00 postponement fee

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deposit in full satisfaction thereof.

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

Concurring Arbitrators' Signatures

Public/Industry

/S/
James F. Turner, III

Public

/S/
Daniel B. Daugherty

Industry

Date of Decision: December 22, 1998

to NASD Regulation, Inc. (hereinafter "NASD") in accordance with the Code of Ethics. (NASD has made its best effort to ensure that the arbitrators are independent and impartial.)

NASD Regulation, Inc. is a not-for-profit corporation organized under the laws of the State of New York. NASD Regulation, Inc. is a member of the Financial Industry Regulatory Authority (FINRA). NASD Regulation, Inc. is a member of the National Association of Securities Dealers (NASD). NASD Regulation, Inc. is a member of the National Futures Association (NFA). NASD Regulation, Inc. is a member of the National Commodity Futures Trading Commission (NCFTC). NASD Regulation, Inc. is a member of the National Futures and Commodity Arbitration Center (NFCAC). NASD Regulation, Inc. is a member of the National Futures and Commodity Arbitration Center (NFCAC). NASD Regulation, Inc. is a member of the National Futures and Commodity Arbitration Center (NFCAC).