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**AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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Securities Dealers, Inc.

In the Matter of the Arbitration Between

1996

Ronald D. Miller,

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Claimant,

v.

No. 95-04728

George G. Hartberg,  
\*Rockwell Financial, Inc.,  
Stonebrook Capital, and  
Anvillar International, Inc.,

Respondents.

**REPRESENTATION OF PARTIES**

Claimant Ronald D. Miller was represented by James A. Bennett of Ryan, Bennett & Radloff, located in Mattoon, Illinois, except that claimant Ronald D. Miller's Statement of Claim was filed pro se.

Respondents George G. Hartberg, Rockwell Financial, Inc., and Stonebrook Capital were represented by Mark S. Michael, Esquire of Dallas, Texas.

Respondent Anvillar International, Inc. failed to appear.

**CASE INFORMATION**

Claimant Ronald D. Miller's Statement of Claim was filed on or about October 5, 1995. Claimant Ronald D. Miller's Submission Agreement was signed on September 28, 1995.

Respondent George G. Hartberg's Statement of Answer was filed on or about December 7, 1995. Respondent George G. Hartberg's Submission Agreement was signed on December 4, 1995.

Respondent Rockwell Financial, Inc.'s Statement of Answer was filed on or about April 29, 1996. Respondent Rockwell Financial, Inc.'s Submission Agreement was signed on April 24, 1996 by George Hartberg, President of Rockwell Financial, Inc.

Respondent Stonebrook Capital's Statement of Answer was filed on or about April 29, 1996. Respondent Stonebrook Capital's Submission Agreement was signed on April 24, 1996 by George Hartberg, President of Stonebrook Capital.

NASD Regulation, Inc. Office of Dispute Resolution has no record of a Statement of Answer from respondent Anvillar International, Inc. NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement from respondent Anvillar International, Inc.

### **HEARING INFORMATION**

A pre-hearing conferences were held on: July 18, 1996 for one (1) session.

The hearing was held on: September 5, 1996 for three (3) sessions.

The hearing was held in St. Louis, Missouri.

### **CASE SUMMARY**

Claimant Ronald D. Miller ("Claimant") alleged that respondent George G. Hartberg, who was associated with respondents Rockwell Financial, Inc. and Stonebrook Capital, (hereinafter collectively referred to as "Respondents") committed an illegal fraudulent act by knowingly making misrepresentations of material facts. Claimant asserted that Respondents solicited and urged him to invest in a limited partnership called the Stonebrook Security Fund (the "Fund") and that upon this urging he purchased 10 units for \$62,500 on December 21, 1993. According to Claimant, no investment return and no correspondence was ever received on this investment. Claimant further asserted that, upon reading the prospectus, he discovered that the partnership shares should never have been offered because the partnership offering was to terminate July 31, 1993, and could be extended until a date not later than September 30, 1993. Claimant also asserted that he made a demand for a refund of this investment plus interest, but it was not answered. Respondent Anvillar International, Inc. is a party in this case because, according to Claimant, this is where his money was sent.

Respondents, unless otherwise admitted in their Answer, Respondents denied the allegation; contained in the Statement of Claim. Respondents stated that there was a Confidential Private Placement Memorandum (the "Memorandum"), which limited the offering of the partnership shares in the Fund as Claimant asserted. However, according to Respondents, there was an Amendment to the Memorandum (the "Amendment") for investors such as Claimant, which extended the offering to September 30, 1994. Respondents contended that, before Claimant invested in the partnership, Claimant acknowledged receipt of the Memorandum and acknowledged that he had read the Memorandum "carefully," and since Claimant did not make any objections at that time, he must have received the Amendment. Furthermore, Respondents contended that the Amendment would have been enclosed with the Memorandum, and since Claimant acknowledged receipt of the Memorandum, Claimant has constructively acknowledged receipt of the Amendment. Even if Claimant did not receive the Amendment to the Memorandum, Respondents stated that there is still a binding contract because Claimant knew or should have known of the limits of the offer and by electing to invest anyway either waived his rights to escape the terms of the offering or is otherwise estopped from invoking those rights. Respondents denied that they committed any fraudulent acts because Claimant had the same information they had with regard to the Fund, which set out the risks involved with investing in the Fund, and because Claimant represented that he reviewed this information, he assumed the risk associated with the Fund.

Respondents made the following affirmative defenses: (1) Respondents were in compliance with any obligations due and owing Claimant in regard to the terms of the offering; (2) Claimant's claim is barred by the doctrine of unclean hands; (3) Claimant's claim is barred because he has failed to plea any facts supporting his claim; and (4) Claimant's claim is barred because Claimant has either waived or is otherwise estopped from asserting his right to damages because he knew or should have known of the facts giving rise to his alleged claim.

### **RELIEF REQUESTED**

Claimant Ronald D. Miller requested an award in the amounts of: \$62,500 for return of initial investment; \$12,500 for interest at 10% for two (2) years; \$650 for filing fee and hearing session deposit; and \$3,000 for time lost for hearing-travel expenses.

Respondents George G. Hartberg, Rockwell Financial, Inc., and Stonebrook Capital each requested that the claims asserted against them be dismissed in their entirety and that the cost of this arbitration be assessed against claimant Ronald D. Miller.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Anvillar International, Inc. did not appear at hearing, did not file with NASD Regulation, Inc. Office of Dispute Resolution a Statement of Answer, and did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed Submission Agreement. 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That the Statement of Claim is denied in its entirety with prejudice; and
- (2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded herein are, and each of them, denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing sessions x \$300 = \$300 in forum fees. There were three (3) hearing sessions x \$500 = \$1,500 in forum fees. Total forum fees are \$300 + \$1,500 = \$1,800. Pursuant to \$10332(b) 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 NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Ronald D. Miller.

Respondent Rockwell Financial, Inc. is liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution \$250 for the member surcharge pursuant to §10333 of the NASD Code of Arbitration Procedure.

Claimant Ronald D. Miller is liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$1,300 (= \$1,800 in total forum fees - \$500 hearing session deposit).

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

Dated:

Keith E. Mattem

/s/

October 2, 1996

Keith E. Mattem

Public Arbitrator, Presiding Chair

Thomas J. Ray

/s/

October 2, 1996

Thomas J. Ray

Public Arbitrator

James D. Veron

/s/

October 2, 1996

James D. Veron

Industry Arbitrator