

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Robert W. and Norma E. Lovell

95-04842

Names of Respondents

Buckhead Financial Corporation
J. Floyd Swilley

REPRESENTATION

For Claimants: Robert M. Weinberger, Esq. of the law firm of Cohen, Norris, Scherer, Weinberger & Wolmer, North Palm Beach, Florida.

For Respondent Buckhead Financial Corporation ("Buckhead"): Gregory R. Crochet, Esq. of the law firm of Kutak Rock, Atlanta, Georgia until his withdrawal on August 29, 1996. Thereafter, Buckhead did not appear.

For Respondent J. Floyd Swilley ("Swilley"): Gregory R. Crochet, Esq. of the law firm of Kutak Rock, Atlanta, Georgia until his withdrawal on July 1, 1996. Thereafter, Russell Z. Plowden, Esq. and B. Shane Clanton, Esq. of the law firm of Nelson Mullins Riley & Scarborough, L.L.P., Atlanta, Georgia took over representation of Mr. Swilley. Messrs. Plowden and Clanton withdrew as counsel on October 7, 1997. Thereafter, Respondent Swilley did not appear.

CASE INFORMATION

Statement of Claim filed: October 10, 1995.

Claimants' Submission Agreement signed on: September 5, 1995.

Statement of Answer filed by Respondents on: December 6, 1995.

Respondent Buckhead's Submission Agreement signed on: December 15, 1995.

Respondent Swilley's Submission Agreement signed on: December 4, 1995.

HEARING INFORMATION

Telephonic pre-hearing conferences were conducted on April 28, 1998 with the arbitration panel and July 20, 1998 with a majority of the arbitration panel. One hearing session was conducted on October 20, 1998 and the evidentiary hearing was conducted in this matter on April 1, 1999 in Atlanta, Georgia.

CASE SUMMARY

Claimants alleged that they were innocent and inexperienced investors who were duped into making investments in an unsound limited partnership, Continental Income Fund II (the "Fund"). Claimants further alleged that on its face, the entire offering was fraudulent and the deficiencies in the Fund as well as the underlying fraud on the part of its principals were either readily apparent to a reasonably prudent account executive or broker or should have been apparent to such individuals and entities with the exercise of due diligence. Claimant next alleged that despite the obvious and readily discoverable deficiencies in the Fund, Respondents used high pressure sales tactics to pressure the Claimants to purchase interests in the Fund. Claimants asserted the investment in the Fund was unsuitable for them; the Respondents breached the fiduciary duty owed to them; and Respondents failed to exercise due diligence.

Respondents alleged that Buckhead, as selling agent, and Mr. Swilley did not have a duty to conduct due diligence and were not in fiduciary relationships with Claimants. Further, Respondents maintained that the relevant and material facts unequivocally establish that the investment was suitable for Claimants at the time it was recommended, and was in all respects appropriately presented by Mr. Swilley. Respondents asserted that any losses or damages claimed by Claimants were a result of the conduct or misconduct on the part of the Fund and its principals, not Buckhead or Mr. Swilley.

RELIEF REQUESTED

Claimants requested compensatory damages in the sum of at least \$50,000.00; punitive damages; and such other relief as the arbitration panel deemed just and proper.

Respondents requested an award from the arbitrators that the claim against them be dismissed and that they be awarded their litigation expenses, costs and fees.

OTHER ISSUES CONSIDERED & DECIDED

The party present at the hearing 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 party present at the hearing agreed to receive conformed copies of the Award while the original(s) remain on file with NASD Regulation, Inc.

Respondents did not appear at the evidentiary hearing in this matter. Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitrators have determined that Respondents were properly served with the Statement of Claim pursuant to Rule

10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents have received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

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:

Respondents are liable, jointly and severally, and shall pay to Claimants the sum of \$50,000.00 plus interest at the rate of 12% per annum from the date of decision until the date of payment of the Award.

Respondents are liable, jointly and severally, and shall pay to Claimants the sum of \$75,000.00 in punitive damages pursuant to the general authority to award punitive damages in fraud cases.

Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Rule 10332c of the Code of Arbitration Procedure, forum fees in the sum of \$2,000.00 (two pre-hearing conferences-panel x \$500.00 plus two sessions x \$500.00) are assessed as follows:

Respondents are assessed, jointly and severally, the sum of \$2,000.00.

OTHER FEES

Pursuant to Rule 10332 of the Code, Claimant has paid to NASD Regulation, Inc. the \$150.00 claim filing fee.

Pursuant to Rule 10333 of the Code, Respondent Buckhead shall pay to NASD Regulation, Inc. the \$300.00 member surcharge previously invoiced.

Pursuant to Rule 10319 of the Code, Claimant shall pay to NASD Regulation, Inc. the sum of \$130.00 representing the balance of the adjournment fee for the hearing scheduled for February 2, 1999.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

_____/S/_____
James R. McGuone, Esq.

Public

_____/S/_____
Joyce F. Glucksman, Esq.

Public

_____/S/_____
Daniel H. Kolber, Esq.

Industry

Date of Decision: April 15, 1999

Concurring Arbitrators' Signatures
Name

Public/Industry

James R. McGuone, Esq.

Public

Joyce F. Gluckman
Joyce F. Gluckman, Esq.

Public

Daniel H. Kolber, Esq.

Industry

Date of Decision: _____

Concurring Arbitrators' Signatures
Name

Public/Industry

James R. McGuone, Esq.

Public

Joyce P. Glucksman, Esq.

Public

Daniel H. Kolber, Esq.

Industry

Date of Decision: _____

Dear Jill:

Per our conversation today, this is the execution page in counterpart which you faxed to me setting forth the award in NASD Arbitration Number 95-04842 Robert W. and Norma E. Lovell v Buckhead Financial Corp. and J. Floyd Swilley. This replaces the execution page for this case which I faxed to you on 4/6/99 and also sent regular mail. The hard copy of this will be sent regular mail. Please call me if you have any questions. Thank you.

Daniel H. Kolber 4/14/99

Concurring Arbitrators' Signatures

Name



James R. McGuone, Esq.

Public/Industry

Public

Joyce F. Glucksman, Esq.

Public

Daniel H. Kolber, Esq.

Industry

Date of Decision: _____