

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Victoria & Denise V. Fitzpatrick

95-05011

Name of Respondents

USLife Equity Sales Corp.
Gary M. Ferone

REPRESENTATION

For claimants, Victoria & Denise V. Fitzpatrick ("claimants"), appeared Joseph D. Cosgrove, Esq., located in Crestwood, New York.

For respondent, USLife Equity Sales Corp. ("USL"), appeared Joel M. Miller, Esq., of the law firm Miller & Wrubel located in New York, New York.

For respondent, Gary M. Ferone ("Ferone"), appeared Charles T. Glaws, Esq., and Dominick J. Porto, Esq. located in New York, New York.

CASE INFORMATION

Statement of Claim filed: October 16, 1995.

Claimant's Submission Agreement signed on: October 16, 1995.

Statement of Answer filed by USL on: February 22, 1996.

Respondent USL's Submission Agreement signed on: February 14, 1996.

Statement of Answer filed by Ferone on: May 3, 1996.

Respondent Ferone's Submission Agreement signed on: May 28, 1996.

HEARING INFORMATION

| | | | |
|--------------------------|--------------------|---|--------------|
| Pre-Hearing Conferences: | September 5, 1996 | - | One Session |
| | September 26, 1996 | - | One Session |
| Hearing dates/sessions: | January 23, 1997 | - | Two Sessions |
| | March 17, 1997 | - | Two Sessions |
| | March 18, 1997 | - | Two Sessions |

March 24, 1997
March 31, 1997

- Two Sessions
- Two Sessions

The hearings were held at the offices of NASD Regulation, Inc., located in New York, New York.

CASE SUMMARY

Claimants alleged that they are mother and daughter and that in the summer of 1993 they were introduced to Ferone, a representative of USL, a securities dealer. Claimants further alleged that they told Ferone that they had limited assets and future earning capacity and that Denise Fitzpatrick would soon receive \$33,901.33 from a trust which she would need for medical expenses. Claimants also alleged that, at Ferone's direction they delivered \$33,500.00 to Sovereign Servicing Corporation ("Sovereign"). Claimants asserted that Sovereign allocated \$25,000.00 to purchase an interest in a loan agreement secured by the credit of Protel Communications Corporation ("Protel") which was evidenced by a note issued by Protel maturing October 1, 1996 with principal and interest payable monthly. Claimants further asserted that the balance of the money was paid by Sovereign to purchase shares of Oppenheimer Strategic Income Fund ("Oppenheimer") to be held in claimants' joint account maintained by USL. Claimants also asserted that, at the time of their investment, Protel had little operating history and was a defendant in a significant litigation which could substantially encumber its assets. Claimants contended that Ferone and Sovereign knew that a participation interest in a loan to Protel represented a private placement and that claimants were not qualified investors and they did not receive a copy of the note until January 14, 1994, at which time Protel was insolvent. Claimants further contended that they were never informed that Sovereign was to receive a fee as placement agent and loan servicer. Claimants also contended that the offer and sale of Protel constituted fraud in the sale of the securities and violated the Racketeering Influenced and Corrupt Organization Act ("RICO"). Claimants maintained that USL failed to supervise Ferone and is liable for the injuries suffered by the Claimants.

Ferone maintained that he was a broker and registered representative of USL from July 1992 to March, 1994 and during this period he was also associated with Legacy Securities ("Legacy") and Heritage Planning Corporation ("Heritage") but was never associated with Sovereign. Ferone further maintained that he invested \$8,500.00 on behalf of the claimants in the Oppenheimer fund and also arranged a loan agreement between claimants and Protel whereby Protel would pay back the loan with interest at 9.5% in installments according to an agreed upon schedule attached to the written agreement. Ferone further maintained that the NASD does not have jurisdiction over the loan agreement because the loan agreement was not the sale of a security. Ferone contended that claimants' claims of violation of federal securities laws may only be brought before a federal court; and claimants' claims for treble damages should be dismissed because the NASD is not empowered to hear claims for treble or punitive damages. Ferone also maintained that claimants failed to sue a necessary party, Protel.

USL maintained that, in 1993, Ferone was an independent contractor acting as a registered representative for USL authorized to sell only products approved by USL. USL further maintained that the Protel note was not approved by USL, Ferone did not sell the note as an agent for USL and any representations made by Ferone in connection with the sale of the Protel note were not made in Ferone's capacity as a registered representative for USL. USL also contended that it had no knowledge of the Protel note and had no relationship with Sovereign, Heritage or Protel. USL further contended that at all times it acted in good faith in maintaining adequate supervision of Ferone as its registered representative but it had no duty to supervise Ferone regarding transactions not undertaken in his capacity as a registered representative for USL. USL maintained that the only securities approved by USL sold by Ferone to claimants were shares of Oppenheimer. USL contended that all claims under the Securities Act of 1933 and the Securities Exchange Act of 1934 are barred by the applicable statute of limitations.

RELIEF REQUESTED

Claimants requested the an award of \$25,000.00 plus interest from September 23, 1993, costs and such additional damages as are equitable under RICO, including attorney's fees.

Respondent Gary M. Ferone requested dismissal of claimants' Statement of Claim and for such other relief that the arbitrators deem just and appropriate.

Respondent USLife Equity Sales Corp. requested dismissal of claimants' claims, reasonable attorneys' fees, disbursements and such other relief as the arbitrators deem proper.

OTHER ISSUES CONSIDERED AND DECIDED

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 originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Gary M. Ferone be and hereby is liable and shall pay to the Claimant \$25,000.00 in compensatory damages and \$5,000.00 in interest.
2. All requests for attorney fees are denied.
3. All requests for punitive damages are denied.
4. All other requests for relief are denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following forum fees:

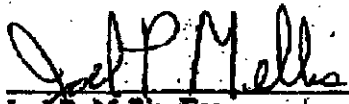
| | |
|-------------------------------|--------------|
| 2 Pre-Hearing Session x \$300 | = \$600.00 |
| 10 Hearing Sessions x \$400 | = \$4,000.00 |
| Total Forum Fees | = \$4,600.00 |

Claimants, Victoria & Denise V. Fitzpatrick, are and are hereby liable and shall pay to NASD Regulation Inc. \$1,533.33 representing one-third of the total amount of forum fees assessed. Claimants previously deposited \$400.00 dollars with NASD Regulation, Inc. Therefore, claimants, Victoria & Denise V. Fitzpatrick, shall pay to NASD Regulation, Inc. the sum of \$1,133.33.


Respondent Gary M. Ferone is liable for \$3,066.67 representing two-thirds of the forum fees assessed.

Therefore, Respondent, Gary M. Ferone, shall pay to NASD Regulation, Inc. the sum of \$3066.67.

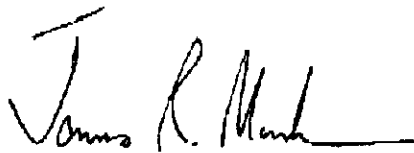
Fees are payable to NASD Regulation, Inc.


Joel P. Mellis, Esq.

I, Joel P. Mellis, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

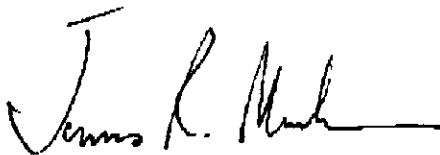

Joel P. Mellis, Esq.

Date of Decision: May 23, 1997



James R. Madan

I, James R. Madan, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.




James R. Madan

Date of Decision: May 23, 1997

ARBITRATORS' SIGNATURES


Ann C. Northern, Esq.

I, Ann C. Northern, Esq., do hereby affirm, pursuant to Article 7307 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award



Ann C. Northern, Esq.

Date of Decision: May 23, 1997

ARBITRATORS' SIGNATURES


Ann C. Northern, Esq.

I, Ann C. Northern, Esq., do hereby affirm, pursuant to Article 7307 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award


Ann C. Northern, Esq.

Date of Decision: May 23, 1997