

N.A.S.D. MODIFIED AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joe K. Berkan

95-05829

Name of Respondents

Columbus Financial, Inc.
Neal B. Stein
Roger H. Chlowitz
Bernard Morry
Mustang Development Corp.

REPRESENTATION

For Claimant: Howard N. Kahn, Esq. of the law firm of Kramer, Green, Zuckerman & Kahn, P.A., Hollywood, Florida.

The Respondent Bernard Morry appeared pro se.

The Respondent Roger H. Chlowitz appeared pro se.

The Respondent Columbus Financial, Inc. did not appear.

The Respondent Neal B. Stein did not appear.

The Respondent Mustang Development Corporation did not appear.

CASE INFORMATION

Statement of Claim filed: December 12, 1995.

Claimant's Submission Agreement signed on: December 6, 1995.

Statement of Answer filed by Respondent Bernard H. Morry on: February 15, 1996.

The Respondents Columbus Financial, Inc., Mustang Development Corp., and Neal B. Stein did not submit Statements of Answer as required pursuant to Section 10314 of the Code of Arbitration Procedure ("Code").

The Respondents Columbus Financial, Inc., Mustang Development Corp., Bernard Morry and Neal B. Stein did not execute Submission Agreements as required pursuant to Section 10314 of the Code.

Statement of Answer filed by Respondent Roger Chlowitz ("Chlowitz") on: January 6, 1997.

Respondent Roger Chlowitz' Submission Agreement executed on: January 17, 1997.

CASE SUMMARY

Claimant alleged that Bernard Morry, as registered representative with Columbus Financial, Inc., telephonically solicited the Claimant to purchase partnership units in Olympus and a review of the offering material revealed Mr. Chlowitz as a registered representative for the Claimant as well. Claimant next alleged that Mr. Morry advised the Claimant that he would receive a 14%-15% return on his investment and at no time did Mr. Morry ever qualify Mr. Berkan as to his net worth, suitability, sophistication, or experience and the Claimant initially subscribed to three units of \$5,000.00 each. Claimant next alleged that Mr. Morry advised the Claimant to sign the subscription agreement without explanation and Mr. Stein, on behalf of Mustang Development Corp., accepted the subscription. Claimant next alleged that at no time was he advised as to the expiration date of the offering and his subscription should have been rejected as a matter of law as the subscription was accepted after the expiration date. Claimant further alleged that Mr. Morry and Mr. Chlowitz again solicited the Claimant to purchase an additional unit for \$5,000.00 which he did and ultimately the investment became worthless and telephone calls by the Claimant to the registered representatives were unreturned. Claimant alleged that the Respondents had intentionally and wilfully deceived him into making unsuitable investments.

Respondent Bernard Morry maintained that any representations that he made to the Claimant were exactly what he had been told to say by Roger Chlowitz, his superior and Compliance Director and he maintained that he was ashamed of his part in the situation. Mr. Morry further maintained that he too was sold on the extreme credibility of Mustang Development Corp. and he gave the Claimant a telephone number in Washington, D.C. for the NASD so that he could verify the credibility of Mustang Development Corp. and Columbus Financial, Inc. and Mr. Morry had called the number himself and was informed there was no negative information concerning these organizations. Respondent Morry next maintained that this information was false. Respondent Morry further maintained the Claimant's claim that he did not properly qualify him was unfounded as the Claimant had told him on numerous occasions that he had obtained well over a million dollars in the stock market while he was still in business a few years earlier.

Respondent Roger Chlowitz denied the allegations contained in the Statement of Claim and maintained that he did not know or ever speak with the Claimant. Respondent Chlowitz next maintained that he did not directly or indirectly induce any act or acts constituting a violation of law. Respondent Chlowitz further maintained that the Claimant purchased the limited partnership units pursuant to a confidential offering memorandum which fully, completely and

accurately disclosed all aspects of the investments made by the Claimant including the risk that the investments may lose their value in their entirety. Respondent Chlowitz contended that the Claimant represented that he received the offering memorandum and subscription documents, reviewed them, signed the subscription documents and returned them to Columbus Financial, Inc.

RELIEF REQUESTED

Claimant requested damages in the sum of \$20,000.00 together with the awarding of interest, costs and punitive damages in an amount deemed appropriate by the Arbitrator and such other and further relief as the Arbitrator deemed just and proper.

Respondent Bernard H. Morry did not specifically delineate a relief request.

Respondent Roger Chlowitz did not specifically delineate a relief request.

OTHER ISSUES CONSIDERED & DECIDED

The Arbitrator dismissed the Respondent Mustang Development Corporation as a party to this matter as he determined that it was not a member of the NASD; therefore, jurisdiction did not exist over this entity.

The Arbitrator found that the Respondent Columbus Financial, Inc. was a member of the NASD at the time the controversy arose and the Respondents Bernard Morry, Roger H. Chlowitz and Neal B. Stein were associated persons at the time the controversy arose. Consequently, the Arbitrator found personal jurisdiction over these Respondents pursuant to Section 10301 of the Code.

Pursuant to Section 10101 of the Code, the Arbitrator found subject matter jurisdiction over the controversy.

In view of the above, the Arbitrator found that Respondents Columbus Financial, Inc., Neal B. Stein and Bernard Morry were required to file with NASD Regulation, Inc. Statements of Answer and properly executed Submission Agreements pursuant to Section 10314(b) of the Code. In this regard, the Arbitrator found that the Statement of Claim was properly served upon these Respondents pursuant to Section 10314(a) of the Code.

In addition, in accordance with Section 10310 of the Code, the Arbitrator found that NASD Regulation, Inc. provided Respondents Columbus Financial, Inc., Neal B. Stein and Bernard Morry with notice of the selection of the Arbitrator. The Arbitrator, therefore, determined to proceed with the matter with these Respondents as parties.

The Claimant requested that the matter be decided on the pleadings submitted and there was no objection. Therefore, the Arbitrator granted the request and issued an Award.

Thereafter, on November 15, 1996 the Respondent Chlowitz submitted to NASD Regulation Inc., Office of Dispute Resolution a request that the Arbitrator reconsider his award asserting that he had not received notice of the claim against him and, therefore, did not have an opportunity to respond to the allegations in the Statement of Claim. The Claimant objected to the request. On December 11, 1996 the Arbitrator granted Respondent Chlowitz' request.

On May 23, 1997 NASD Regulation, Inc., Office of Dispute Resolution was informed that the Claimant was withdrawing, without prejudice, all claims against Respondent Chlowitz and Respondent Chlowitz had no objection to the dismissal without prejudice.

AWARD

The undersigned Arbitrator having considered the proof of the parties, has decided in full and final resolution of the issues submitted for determination as follows:

The Respondents Columbus Financial, Inc., Neal B. Stein and Bernard Morry be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$20,000.00 plus pre-judgment simple interest at the rate of 8% per annum from December 6, 1995 until December 31, 1995 and pre-judgment simple interest at the rate of 10% per annum from January 1, 1996 until November 10, 1996.

The Claimant's request for punitive damages is denied.

The Respondents Columbus Financial, Inc., Neal B. Stein and Bernard Morry be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$400.00 representing reimbursement of the filing fees previously paid by the Claimant to NASD Regulation, Inc.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the Arbitrator has determined that NASD Regulation, Inc. shall retain the \$300.00 hearing session deposit and the \$100.00 claim filing fee previously paid by the Claimant to NASD Regulation, Inc.

The Respondent Columbus Financial, Inc. be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$200.00 representing the member surcharge pursuant to Section 10333 of the Code.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

Arbitrator's Signature

Name

Public/Industry

/S/

John B. Kelley, Esq.

Date of Decision: June 9, 1997