

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Marie C. Munger, individually
Frederick H. & Marie C. Munger Living
Trust 11/16/95

96-00749

Name of Respondent(s)

Victor Verola
Great American Financial Network

REPRESENTATION

For Claimants Marie C. Munger ("Munger") and The Frederick H. & Marie C. Munger Living Trust ("the Trust"): Tim B. Wright, Esq. of Warner, Fox, Seeley, Dungey & Sweet, Stuart, Florida.

Respondents Great American Financial Network ("Great American") and Victor Verola ("Verola") were originally represented by J. Wesley Holston, Esq. of Fowler, white, Burnett, Hurley, Banick & Stickroot, P.A., Miami, Florida. J. Wesley Holston, Esq. subsequently withdrew as counsel for the Respondents and, thereafter, Respondent Great American was represented by Ed Bates Chief Financial Officer of Great American, Vero Beach, Florida and Respondent Verola appeared pro se.

CASE INFORMATION

Statement of Claim filed: February 20, 1996. Claimants' Submission Agreement signed on: February 16, 1996 by Marie Munger, individually and on March 8, 1996 by Marie Munger on behalf of the Trust.

Joint Statement of Answer filed by Respondents on May 29, 1996. Respondents Great American and Verola failed to sign Submission Agreements as required by Rules 10301 and 10314 of the NASD Code of Arbitration Procedure ("Code") (see "Other Issues").

HEARING INFORMATION

On February 7, 1997 a telephonic pre-hearing conference was conducted with a single arbitrator.

On February 11 and 12, 1997 in Ft. Lauderdale, Florida, hearings lasting three sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for violation of Florida Statute Section 57.301, breach of contract, common law fraud, and breach of fiduciary duty. Claimants alleged that Respondents' recommendation of the purchase of \$36,000.00 worth of limited partnerships which all had the same general partner was unsuitable for Claimants. Claimants maintained that their liquid net worth amounted to only \$50,000.00 at the time the recommendation was made and that the broker failed to properly diversify the portfolio.

Respondents denied all allegations of wrongdoing and alleged that Claimants were experienced investors who had a pattern of investing in risk oriented investments and Claimants were familiar with the general partner by virtue of having attended several seminars sponsored by the general partner. Respondents maintained that Verola was not the broker involved in the first purchase of the limited partnerships and was only assigned to the account after the Claimants' original broker left the firm. Respondents next maintained that the new account form completed by Claimants' original broker stated the Claimants' net worth as \$300,000.00 and Verola's recommendation that Claimants purchase an additional \$20,000.00 worth of limited partnerships was not excessive in light of Verola's belief that Claimants' net worth was accurately reported on the new account form.

RELIEF REQUESTED

Claimants requested damages of approximately \$60,000.00 plus interest, costs and attorney's fees.

Respondents requested dismissal of the claim plus costs and expenses.

OTHER ISSUES CONSIDERED & DECIDED

Pursuant to Rule 10101 of the Code, the arbitration panel found subject matter jurisdiction over this controversy. The arbitration panel further found that the Respondent Great American was a member of the NASD at the time this controversy arose and that Respondent Verola was a person associated with a member of the NASD at the time the controversy arose. Consequently, the arbitration panel found personal jurisdiction over both Respondents pursuant to Rule 10301 of the Code.

In view of the above, the arbitration panel found that the Respondents were required to file with the NASD properly executed Submission Agreements pursuant to Rule 10314(b) of the Code. In this regard the arbitration panel found that the Statement of Claim was properly served upon

the Respondents pursuant to Rule 10314(a) of the Code.

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 (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Great American and Verola are found liable, jointly and severally, and shall pay to Claimants the amount of \$10,000.00.
2. Claimants' requests for interest, costs and attorney's fees are denied.
3. Respondents' requests for costs and expenses are denied.
4. Respondents Great American and Verola are also found liable and shall pay to Claimant the further amount of \$300.00 as a partial reimbursement of the hearing session deposit previously paid by Claimant.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,800.00 (three sessions x \$500.00 per session plus \$300.00 for the pre-hearing conference).

1. Respondents Great American and Verola are hereby assessed \$1,800.00, jointly and severally, for which the NASD shall retain the \$500.00 previously deposited by Claimants in partial satisfaction thereof, leaving a balance due to the NASD of \$1,300.00.
2. The NASD shall retain the \$150.00 non-refundable filing fee previously paid by Claimants to the NASD.
3. Respondent Great American is hereby assessed the \$300.00 member surcharge pursuant to Rule 10333 of the Code.

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Award

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

Concurring Arbitrators' Signatures
Name

Public/Industry

_____/s/_____
Louise T. Jeroslow, Esq.

Public/Chairperson

_____/s/_____
Norman Ciment, Esq.

Public

_____/s/_____
Nicholas A. Natale

Industry

Date of Decision: March 24, 1997