

N.A.S.D. REGULATION, INC. AWARD

NASD Regulation, Inc.

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In the Matter of the Arbitration Between

Name of Claimant(s)

Carl V. & Catherine F. Conti Living Trust  
Carl and Catherine Conti

96-00832

Name of Respondent(s)

Great American Financial Network, Inc.  
Victor Verola

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**REPRESENTATION**

For Claimants Carl V. & Catherine F. Conti Living Trust and Carl and Catherine Conti: Tim B. Wright, Esq. of Warner, Fox, Seeley, Dungey & Sweet, Stuart, Florida.

Respondents Great American Financial Network, Inc. ("Great American") and Victor Verola ("Verola") were originally represented by Ronald Shindler, Esq. of Fowler, White, Burnett, Hurley, Banick & Strickroot, Miami, Florida. On April 2, 1997, Mr. Shindler withdrew as counsel and provided NASD Regulation, Inc. with the addresses for each Respondent. Thereafter, Respondent Verola appeared pro se and the representative for Great American was Dr. Edward Bates of Great American, Vero Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed: February 26, 1996. Claimants' Submission Agreement signed: February 21, 1996.

Respondents' Joint Statement of Answer filed: May 22, 1996. Respondents did not file Submission Agreements as required by Rules 10301 and 10314 of the Code of Arbitration Procedure ("Code").

### **HEARING INFORMATION**

On December 3, 1996, in Fort Lauderdale, Florida, a prehearing conference lasting one (1) session was conducted via telephone conference call with the full panel. On April 22, 1997, in Fort Lauderdale, Florida, a prehearing conference lasting one (1) session was conducted via telephone conference call with one arbitrator.

On April 29, 1997, in Fort Lauderdale, Florida, a hearing lasting one (1) session was conducted.

### **CASE SUMMARY**

Claimants alleged that Respondents sold them a \$40,000.00 limited partnership interest in Datronic Equipment Income Fund XIX, L.P. which represented over fifty percent of Claimants' net worth; that Respondents sold Claimants an investment which was unsuitable and failed to properly diversify Claimants' portfolio; and, that Respondents' actions constituted breach of contract, common law fraud and deceit, breach of fiduciary duties, and a violation of Section 517.301, Florida Statutes.

Respondents denied all allegations of wrongdoing and alleged that all claims were baseless; that Claimants actively participated in every investment decision; and, that the prospectus fully and completely disclosed the risks and suitability of the investment. Respondents alleged the affirmative defenses of authorization, waiver and estoppel, full disclosure, applicable statute of limitations, assumption of risk, decline in value caused by events beyond the control of Respondents, failure to exercise due diligence, contributory negligence, ratification and estoppel, failure to mitigate damages, lack of reasonable reliance, and the doctrine of laches and waiver.

### **RELIEF REQUESTED**

Claimants requested damages in the amount of \$35, 035.56 pursuant to Section 517.211, Florida Statutes, attorney's fees and costs.

Respondents requested dismissal of all claims against them plus costs and expenses.

### OTHER ISSUES CONSIDERED AND DECIDED

1. At 9:20 A.M. on April 29, 1997, just prior to the commencement of the final hearing in this matter, NASD Regulation, Inc. staff received a telephone call on behalf of Dr. Bates, the representative for Respondent Great American. The message was from a Mr. Scott Bjornson, an employee of Great American, and stated that "Dr. Ed Bates is sick and will not be attending (sic) hearing". Great American did not appear at the hearing or request a postponement thereof. Having determined that Great American had fully participated in this matter, including appearances at the prehearing conferences on both December 3, 1996, through counsel Ronald Shindler, and April 22, 1997, through Dr. Bates, the panel decided to proceed with the hearing pursuant to Rule 10318 of the Code.
2. NASD Regulation, Inc. was informed that Respondent Verola and the Claimants entered into a settlement agreement the evening prior to the evidentiary hearing in this matter. Therefore, this panel did not consider and this decision does not address any issues regarding that Respondent.
3. The Claimants 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 Claimants have agreed to receive a conformed copy 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, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Great American is found liable and shall pay to the Claimants the amount of \$10,125.00, plus interest at the legal rate of 12%, 8% and 10%, respectively, per annum from August 1, 1991 to April 29, 1997, in the amount of \$24,911.00 for a total sum due to the Claimants of \$35,035.56, pursuant to Section 517.211, Florida Statutes.
2. Claimants' requests for attorney's fees and costs are denied.
3. Great American shall pay to the Claimants the further amount of \$400.00 representing reimbursement of the hearing session deposit previously paid by the Claimants to NASD Regulation, Inc.
4. Great American's requests for costs and expenses are denied.

### FORUM FEES

Pursuant to Rule 10332 of the Code, the panel has assessed forum fees in the amount of \$1,100.00 (one prehearing conference x \$400.00 per session, one prehearing conference x \$300.00 per session, plus one hearing session x \$400.00 per session).

1. Great American is hereby assessed the sum of \$1,100.00, for which NASD Regulation Inc. shall retain the \$400.00 previously deposited by the Claimants in partial satisfaction thereof, leaving a balance due in the sum of \$700.00.
2. The NASD shall retain the \$400.00 session deposit paid by the Claimants, for which the Claimants shall be reimbursed by Great American, as stated above.
3. The NASD shall retain the claim filing fee of \$120.00 paid by the Claimants.
4. Pursuant to Rule 10333 of the Code, Great American shall pay to NASD Regulation Inc. the \$200.00 past due member surcharge, which was previously invoiced.

Fees are payable to NASD Regulation, Inc.

### Concurring Arbitrators' Signatures

/s/	Public
_____ Randy L. Rubin, Esq.	
/s/	Public
_____ Stuart I. Stern, Esq.	
/s/	Industry
_____ Marc S. Piven	

Date of Decision: May 20, 1997