

## **AWARD**

**NASD Regulation, Inc.,  
Office of Dispute Resolution**

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In the Matter of the Arbitration Between

Ezra Bayda  
Diane Bayda

Claimant(s)

NASD Regulation, Inc.  
No. 96-00919

v.

Alan Berman  
First Affiliated Securities, Inc.

Respondent(s)

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### **REPRESENTATION OF PARTIES**

Ezra Bayda, Diane Bayda were represented by Ezra Bayda, Santa Rosa, California

Alan Berman was represented by Alan Berman, Santa Rosa, California

First Affiliated Securities, Inc. did not enter an appearance.

### **CASE INFORMATION**

Statement of Claim filed: February 29, 1996.

Claimants' Submission Agreement signed: February 23, 1996.

Statement of Answer filed by Respondent:

Alan Berman: April 29, 1996.

First Affiliated: None submitted.

Respondents' Submission Agreements signed:

Alan Berman: April 24, 1996

First Affiliated: None Submitted

### **CASE SUMMARY**

Claimants alleged Respondent Berman, working through First Affiliated, sold them unsuitable limited partnership investments for their retirement account.

Respondent Berman denied the allegations of wrongdoing, and stated that claimants were sophisticated investors who specifically sought out real estate investment for their retirement account.

### **RELIEF REQUESTED**

Claimants requested damages of \$7500.00, plus punitive damages of \$2500.00.

Respondent Berman requested dismissal of the claim.

### **AWARD**

In accordance with the parties' agreement and pursuant to Section 10302 of the Code of Arbitration Procedure, Margaret Kallman was selected to review and determine the above-captioned matter based on the written submissions of the parties. Ms. Kallman, having reviewed and considered the written submissions, has decided in full and final resolution of the issues submitted as follows:

All claims asserted by Claimants are dismissed in their entirety.

### **A BRIEF EXPLANATION OF THE AWARD**

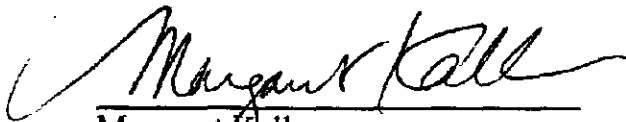
The crucial issue here is whether the Respondent Alan Berman's recommendation to the Baydas to buy DiVall Income III Limited Partnership was suitable at the time the Baydas invested in it, September, 1990.

The articles attached to the Answer show the industry's judgment of that investment over the period of time from 1988 to mid-1991. Fortune Magazine in 1988 describes triple-net partnerships such as DiVall (and RIC, another of Respondent's recommendations which Claimants also bought) as comparable in safety to "blue-chip stocks." This article cites Robert A. Stanger & Co. as an authority on partnerships saying that DiVall II (apparently a

predecessor to the Baydas' DiVall III) is rated AAA for safety and reasonable front-end loads. The two Stanger Reports for September, 1990, and June, 1991 show DiVall performance as better than average. The Venita Van Caspel Money Dynamics Letter of July, 1990 specifically says DiVall is suitable for SEP-IRA's, which is what the Baydas bought it for. Apparently at the time Claimants invested, this type of investment, and this specific investment, were regarded as safe and conservative.

### **FORUM FEES**

Pursuant to Section 10332 of the NASD Regulation, Inc., Office of Dispute Resolution Code of Arbitration Procedure (the "Code"), the NASDR shall retain Claimants' non-refundable \$75.00 filing fee and the \$75.00 paper case fee.



Margaret Kallman  
Public Arbitrator, Presiding Chair

Dated:

31 March 1997

Date served: 4/3/1997