

12/97 4712052

NASD REGULATION, INC. AWARD

Office of Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Louis J. and Lillian Fiorentini

96-01609

Names of Respondents

Jeffrey M. Schuler
Nico P. Pronk
Noble Investment Company of Palm Beach

REPRESENTATION OF PARTIES

For Claimants: Charles J. Kane, Esq., of the law firm of Greenspan & Kane, Boca Raton, FL.

For Respondents Noble Investment Company of Palm Beach ("Noble"), Jeffrey M. Schuler ("Schuler"), and Nico P. Pronk ("Pronk"): Wayne H. Schwartz, Esq. of Atlas, Pearlman, Trop & Borkson, P.A., Fort Lauderdale, FL.

CASE INFORMATION

Statement of Claim was filed on April 12, 1996. Submission Agreement of Claimants was signed on April 8, 1996.

Joint Statement of Answer was filed by Respondents on July 9, 1996. Submission Agreements of Respondents were signed by Wayne Horne on behalf of Respondent Noble and by Respondents Pronk and Schuler on July 9, 1996.

HEARING INFORMATION

Telephonic pre-hearing conferences were held on February 28, 1997 and October 8, 1997, with the full panel presiding.

The evidentiary hearing was held on November 20, 21, and 24, 1997, in Fort Lauderdale, FL for a total of six sessions.

CASE SUMMARY

Claimants asserted seven claims arising out of the business they conducted with Respondents during the time frame from December 1994 through early January 1995 as follows: (1) violation of Section 10(b) of the 1934 Exchange Act, 15 USC Section 78(t) and Rule 10b-5, by employing a scheme to defraud by making material misstatements of facts and omitting to state material facts; (2) control person liability pursuant to Section 20 of the 1934 Exchange Act, 15 USC Section 78(t); (3) damages pursuant to F.S. Section 517.301 by making material misstatements of facts and omitting to state material facts in violation of F.S. Sections 517.211 and 517.301; (4) common law breach of fiduciary duty; (5) common law negligence; (6) common law fraud; and, (7) violation of Section 12(2) of the Securities Act of 1933. Claimants alleged that they invested \$155,710.00 during the period in question and sustained out of pocket losses in the amount of \$82,353.60.

Respondents denied all of the material allegations set forth in the Statement of Claim and further denied that Claimants were entitled to any damages whatsoever. Respondents raised several affirmative defenses including: estoppel and waiver based upon Claimants' statements or conduct; ratification; contributory negligence; and, that Claimants' claims sounded in tort and were barred by the economic loss rule.

RELIEF REQUESTED

Claimants requested compensatory damages in the sum of \$82,353.60; interest at the legal rate in the sum of \$26,266.09 through October 10, 1997 with per diem thereafter at \$28.01; attorneys' fees and costs; and, punitive damages.

Respondents requested a dismissal or the entry of an award in their favor finding that no damages are due the Claimants, plus costs and reasonable attorney's fees.

OTHER ISSUES CONSIDERED & 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 Regulation, Inc. Office of Dispute Resolution.

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. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.

2. Claimants' requests for attorneys' fees, costs, and punitive damages are denied.

3. Respondents' requests for costs and reasonable attorney's fees are denied.

4. Respondents are liable, jointly and severally, and shall pay to the Claimants the sum of \$1,500.00 representing reimbursement of the hearing session deposit previously paid by the Claimants to NASD Regulation, Inc.

FORUM FEES

Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$4,000.00 (2 prehearing conferences x \$500.00 per session, plus 6 hearing sessions x \$500.00 per session).

1. Respondents, jointly and severally, are assessed the sum of \$4,000.00 for which NASD Regulation, Inc. shall retain \$2,500.00 previously deposited by Respondent Noble plus \$1,500.00 previously deposited by Claimants in full satisfaction thereof. Claimants will be reimbursed by Respondents as set forth in the "AWARD" section, above.
2. NASD Regulation, Inc. shall retain the claim filing fee of \$150.00 paid by the Claimants.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Leo H. Kerns, Esq.
Public Arbitrator, Presiding Chair

/s/

Elena G. Rodriguez
Public Arbitrator

/s/

Fred B. Schack
Industry Arbitrator

Date of Decision: 12-16-97