

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Robert & Sandra J. Van Langen

96-02334

Name of Respondent(s)

G.R. Phelps & Company, Inc.

REPRESENTATION

For Claimants Robert & Sandra J. Van Langen ("the Van Langens"): Michael Casey, Esq. of Casey and Molchan, P.A., Ft. Lauderdale, FL.

For Respondent G.R. Phelps & Company, Inc. ("G.R. Phelps"): Daniel Schwartz, Esq. of Day, Berry & Howard, Stamford, CT.

CASE INFORMATION

Statement of Claim filed: May 31, 1996. Claimants' Submission Agreement signed on: June 10, 1996.

Statement of Answer filed by Respondent on: August 20, 1996. Respondent G.R. Phelps failed to sign a Submission Agreement as required by Rules 10301 and 10314 of the NASD Code of Arbitration Procedure ("Code") (see "Other Issues").

HEARING INFORMATION

On November 18, 1996 a telephonic pre-hearing conference was conducted with the full panel.

CASE SUMMARY

Claimants alleged that Respondent was liable for breach of contractual duty; breach of fiduciary duty; and, negligent supervision. Claimants next maintained that they were wrongfully induced by their broker at G. R. Phelps to invest approximately \$400,000.00 in limited partnerships sponsored or underwritten by Respondent. Claimants alleged that the limited partnerships were

unsuitable for Claimants due to the large amount of money that Respondent recommended that Claimants invest in the limited partnerships and the inherent risk factors involved in the investment. Claimants next maintained that Respondent downplayed the risks involved and fraudulently concealed from Claimants the declining values of the limited partnerships.

Respondent denied liability and alleged that the claim was not eligible for arbitration pursuant to Rule 10304 of the Code (formerly Section 15) since more than six years had elapsed from the occurrence or event that gave rise to the act or dispute, claim or controversy. Respondent maintained that the claim was filed approximately nine years after the purchase of the last limited partnership at issue and that the cause of action accrued at the time the limited partnerships were purchased. Respondent further alleged that, since Rule 10304 is a substantive eligibility requirement and not a procedural statute of limitation, a claim of fraudulent concealment cannot extend the six-year filing period.

RELIEF REQUESTED

Claimants requested damages in the approximate amount of \$400,000.00, including lost profits, plus interest and costs.

Respondent requested dismissal of the claim.

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 was a member of the NASD at the time the controversy arose. Consequently, the arbitration panel found personal jurisdiction over the Respondent pursuant to Rule 10301 of the Code.

In view of the above, the arbitration panel found that the Respondent was required to file with the NASD a properly executed Submission Agreement 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 Respondent pursuant to Rule 10314(a) of the Code.

AWARD

This matter came before this panel of arbitrators pursuant to the Motion to Dismiss Pursuant to Rule 10304 of the Code filed by Respondent. After considering the pleadings, the Motion to Dismiss, Claimants' Response, Respondent's Reply in Support of the Motion to Dismiss and Claimants' Supplemental Response as well as the argument of counsel presented at the November 18, 1996 pre-hearing conference, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent's Motion to Dismiss Pursuant to Rule 10304 is hereby granted and all claims are, therefore, dismissed.

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 NASD Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$750.00.

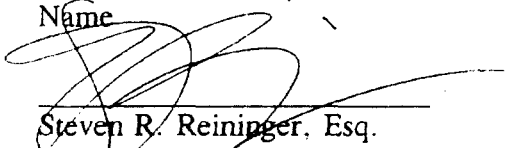
1. Claimants are hereby assessed \$750.00 for which the NASD shall retain the \$750.00 previously deposited by Claimants in full satisfaction thereof.
2. The NASD shall retain the \$200.00 non-refundable filing fee previously paid by Claimants to the NASD.
3. Respondent is hereby assessed the \$350.00 member surcharge pursuant to Rule 10333 of the Code (formerly Section 45).

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

Concurring Arbitrators' Signatures

Name

Public/Industry


Steven R. Reininger, Esq.

Chairman/Public


Lucie L. Sabella

Industry

Dissenting Arbitrator Signature


Martin Weinberg

Public

Date of Decision: March 7, 1997