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**NASD REGULATION, INC. AWARD**

**Office of Dispute Resolution**

**In the Matter of the Arbitration Between**

**Name of Claimants**

Jean M. Donovan  
Dorothy M. Fess  
Nicholas Fess

**Case No. 96-03458**

**Name of Respondents**

Victor Verola  
\*Great American Financial Network, Inc.,  
f/k/a Marina Securities, Inc.  
Timothy G. Gillis  
Stephan S. Buckley  
A.S.A. Investment Company

**REPRESENTATION OF PARTIES**

For Claimants Jean M. Donovan, Dorothy M. Fess, and Nicholas Fess: Neil J. Blaher, Esq., of the law firm of Neil J. Blaher, Orlando, Florida.

Respondent Victor Verola ("Verola") originally appeared pro se. Thereafter, on June 2, 1997, NASD Regulation, Inc. was informed that Stanley Jenkins of Stanley Jenkins & Associates of West Palm Beach, FL had been retained to represent Mr. Verola.

Respondent Great American Financial Network, Inc. ("Great American") f/k/a Marina Securities, Inc. ("Marina") was originally represented by Robert J. Mottern, Esq. of the law firm of Mottern & Van Gelderen of Atlanta, GA. Thereafter, on June 2, 1997, NASD Regulation, Inc. was informed that Edward L. Bates, Officer of Great American of Norcross, GA would be representing Great American.

For Respondent Timothy G. Gillis ("Gillis"): Bruce W. Barnes, Esq. of the law firm of Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A. of Tampa, FL.

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For Respondents Stephan S. Buckley ("Buckley") and A.S.A. Investment Company ("ASA"): Kenneth B. Drost, Esq. of the law firm of Kenneth B. Drost of Hoffman Estates, IL.

### **CASE INFORMATION**

Statement of Claim was filed on August 12, 1996. Submission Agreement of Claimant Jean Donovan was signed on July 17, 1996. Submission Agreement of Claimant Dorothy M. Fess was signed on July 3, 1996. Submission Agreement of Claimant Nicholas Fess was signed on July 3, 1996.

Statement of Answer was filed by Respondent Great American on October 24, 1996. Submission Agreement of Great American was signed on October 23, 1996 by Jack E. Perry, President of Great American.

Statement of Answer was filed by Respondent Gillis on January 20, 1997. Submission Agreement of Gillis was signed on September 17, 1996.

Statement of Answer was filed by Respondents Buckley and ASA on or about October 3, 1996. Submission Agreement of Buckley was signed on September 26, 1996. Submission Agreement of ASA was signed on November 6, 1996 by Stephan S. Buckley, President of ASA.

Respondent Verola did not file a Statement of Answer as required by Rule 10314 of the Code. Submission Agreement of Verola was signed on June 2, 1997.

### **HEARING INFORMATION**

A telephonic pre-hearing conference was held on January 9, 1997, with the full panel presiding and on April 28, 1997, with the Chairman presiding.

The evidentiary hearing was held on June 2, 3, and 4, 1997, in Fort Lauderdale, FL for a total of seven sessions.

### CASE SUMMARY

Claimants alleged that after retiring and moving to Florida in 1991, Nicholas and Dorothy Fess attended a series of seminars hosted by Respondent Marina and its principal Respondent Verola and, in most instances, Respondent Gillis gave the sales presentation in his capacity as an employee of Respondents ASA and Buckley. Claimants further alleged that in large part through these seminars, they were convinced to invest approximately 80% of their savings and retirement money previously held in their IRA accounts in highly risky, speculative private placements which paid Respondents commissions in varying proportions up to 10% plus perks. Claimants alleged that they placed their funds in the following investments: Datronic Equip. & Income Fund XVIII; Datronic Equip. & Income Fund XIX; Datronic Financial Income Fund I; Dyna Corporation Financial Strategies; Great American Resorts; Great Lakes Telecommunications; Keller Financial Services; and, Seeburg Int'l Inc. Notes. Claimants further contended that Mr. and Mrs. Fess were so convinced of the safety and suitability of the investments based on Respondents' sales presentations that they conveyed the information they learned to Mrs. Fess' sister, Claimant Jean Donovan, who made contact with Respondents and agreed to purchase some of the investments that Mr. and Mrs. Fess had purchased. Claimant Donovan alleged that she agreed to purchase the following investments: Keller Financial Services of Pinella; Keller Financial Services of W. Fla.; and, Seeburg Int'l Inc. Claimants asserted claims for common law fraud, negligence, breach of fiduciary duty and breach of contract based on the unsuitable recommendations made to them; the inducements to buy the investments through misrepresentations and omissions; and the deficiencies in Respondents' supervision of its agents and employees.

Respondent Great American denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the affirmative defenses of failure to state a claim, estoppel, ratification, bar by laches and statute of limitations, contributory negligence, assumption of risk, failure to mitigate damages, and good faith.

Respondent Gillis denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the affirmative defenses of ratification, assumption of risk, and the economic loss rule.

Respondents Buckley and ASA denied the allegations of wrongdoing set forth in the Statement of Claim.

Respondent Verola did not file an Answer but put on a defense and testified at the hearing. Verola alleged that Claimants were seasoned investors for whom the investments were suitable and that part of the losses in the account were due to fraud by the issuer and market fluctuations.

### **RELIEF REQUESTED**

Claimants requested rescission of the purchases of the securities still held by them and compensatory damages of not less than \$500,000.00 including interest, plus costs in the amount of \$5,192.00 and punitive damages.

Respondents Verola, Great American, Gillis, Buckley, and ASA requested dismissal and costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. As stated in the Statement of Claim, under the terms of a class action filed against Datronic, Claimants, by virtue of not having opted out of that action, have released Respondent Buckley solely with respect to the claims involving the Datronic investments.

2. On June 2, 1997, this Panel was informed that the Claimants and Great American had reached a settlement. Attached hereto and incorporated by reference herein are the Letter of Understanding preliminary to the Settlement Agreement and the Settlement Agreement and Mutual Release, paragraph one of which stipulates to the entry of an award as follows:

The parties agree to a stipulated arbitration award in the NASD Arbitration awarding damages in the amount of \$56,000.00 in favor of the Claimants and against Great American. The form that such stipulated award (hereinafter the "Stipulated Award") is to take is attached hereto, made a part hereof and marked as attachment A.

3. 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 original remains 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. Respondent Verola is found liable and shall pay to Claimants Nicholas and Dorothy M. Fess the amount of \$125,000.00 plus pre-judgement interest at the rate of 8% per annum from June 5, 1994 to August 4, 1997, and to Claimant Jean Donovan the amount of \$2,600.00 plus pre-judgement interest at the rate of 8% per annum from June 5, 1994 to August 4, 1997.
2. Respondent Great American is found liable, pursuant to the stipulation for entry of an award, and shall pay to the Claimants, collectively, the amount of \$56,000.00 according to the payment schedule set forth in the Settlement Agreement.
3. Respondents Gillis, Buckley, and ASA are found not liable and all claims against them are hereby dismissed.
4. Claimants' requests for rescission and punitive damages are denied.
5. Respondent Verola is found liable for Claimants' costs (exclusive of fees imposed by NASD Regulation, Inc, which are awarded below) in connection with this proceeding, and shall pay to Claimants the amount of \$2,842.00.
6. Respondents' requests for costs are denied.

### 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, this Panel has assessed forum fees in the amount of \$6,300.00 (1 pre-hearing conference before the full panel at \$750.00 per session, 1 pre-hearing conference before the Chairman at \$300.00 per session, plus 7 hearing sessions x \$750.00 per session).

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1. The Claimants Mr. and Mrs. Fess are assessed \$1,050.00 (\$1,800.00 less the \$750.00 previously deposited), payable directly to NASD Regulation, Inc.
2. Respondents Verola, Great American, Gillis, Buckley, and ASA, are hereby assessed \$900.00 each, payable directly to NASD Regulation, Inc.
3. NASD Regulation, Inc. shall retain the claim filing fee of \$200.00 paid by the Claimants.
4. Pursuant to Rule 10333 of the Code, Respondent Great American shall pay to NASD Regulation, Inc the \$350.00 past due member surcharge, which was previously invoiced.

**Fees are payable to NASD Regulation, Inc.**

**Concurring Arbitrators' Signatures**

/s/

Joseph Bernstein, Esq.  
Public Arbitrator, Presiding Chair

/s/

George L. Davis  
Public Arbitrator

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Seymour Roberts  
Industry Arbitrator

Date of Decision: August 5, 1997

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Public Arbitrator, Presiding Chair

/s/  
George L. Davis  
Public Arbitrator

//  
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Industry Arbitrator

Date of Decision: August 5, 1997