

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Walter and Shirley Henderson

96-03612

Name of Respondents

Great American Financial Network, Inc.
Aegon USA Securities, Inc.
Victor Verola
Sharon L. Jackson-Burchett

REPRESENTATION

For Claimants: William J. Schifino, Jr., Esq. and Kenneth G. Turkel, Esq. of the law firm of Williams, Reed, Weinstein, Schifino & Mangione, P.A., Tampa, Florida.

For Respondents Aegon USA Securities, Inc. ("Aegon") and Sharon L. Jackson-Burchett ("Jackson"): Debra A. Jenks, Esq. of the law firm of Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, Florida.

Respondent Victor Verola ("Verola") appeared pro se.

Respondent Great American Financial Network, Inc. ("GAFN") was represented by Scott Bjornson of GAFN.

CASE INFORMATION

Statement of Claim filed August 21, 1996.

Claimants' Submission Agreement signed on July 31, 1996.

Joint Statement of Answer of Respondents Great American Financial Network, Inc. and Victor Verola dated April 14, 1997.

Submission Agreement of GAFN signed on June 10, 1997.

Joint Statement of Answer filed by Respondents Aegon and Burchett on January 27, 1997.

Statement of Answer filed by Burchett on January 29, 1997.

Submission Agreement of Respondent Aegon signed on December 20, 1996.

Respondents Burchett and Verola did not execute Submission Agreements.

HEARING INFORMATION

Two telephonic pre-hearing conferences were conducted with the arbitration panel on May 27, 1997 and June 2, 1997. In addition, two sessions were conducted on July 9, 1997 in Tampa, Florida.

CASE SUMMARY

Claimants alleged that they filed a Statement of Claim against the Respondents for breach of fiduciary duty, negligence, violation of the anti-fraud provision of the Florida Securities Act, and sale of securities by an unregistered broker. Claimants further alleged the investments at issue were purchased with \$71,000.00 which represented the Claimants' retirement savings.

Respondents Great American and Verola denied every allegation contained in the Statement of Claim. Further, Respondents Great American and Verola maintained that they never made any misrepresentations or omitted to disclose material facts to Claimants in connection with the investments at issue. Respondents Great American and Verola next contended that the overall strategy applied to Claimants' accounts were fully disclosed to them, and executed only upon their approval; therefore, Claimants' claims have no merit. Next, Respondents Great American and Verola maintained the claims are barred in whole or in part by applicable statutes of limitations according to Florida law. Further, Respondents Great American and Verola contended that the claims are barred in whole or in part by Rule 10304 of the Code of Arbitration Procedure ("Code") as the purchases were made through Marina Securities, Inc. more than six years ago.

Respondent Aegon and Jackson denied all of the allegations contained in the Statement of Claim. More specifically, Respondents Aegon and Jackson maintained that the Claimants were fully aware from the outset of the risks of profits and losses associated with investing in limited partnerships, and voluntarily assumed such risks. Respondents Aegon and Jackson asserted that the Claimants' losses may have been due to factors that were beyond their control. Further, Respondents Aegon and Jackson contended that the Claimants have failed to state a cause of action for the sale of securities by an unregistered broker on the grounds that Ms. Jackson was registered to transact business with the Claimants in South Dakota at all times relevant hereto.

In response to the issues raised concerning Rule 10304 of the Code and the applicable statutes of limitation, the Claimants maintained that Rule 10304 does not provide that the occurrence or event giving rise to the act or dispute is the date of purchase. Claimants further maintained that Claimants' causes of action are based upon the fact that they were lulled into holding the investments at issue based upon a series of misrepresentations by Respondents, and such actions constituted a continuing breach of the Respondents' duties of disclosure and a violation of numerous rules and laws.

RELIEF REQUESTED

At the hearing Claimants requested compensatory damages in the sum of \$55,276.00, interest, costs, attorneys' fees and punitive damages.

Respondent Great American and Verola requested that the arbitrators enter an award dismissing the claim in its entirety, reimbursing them for their costs and expenses in defending the claim, and assessing forum fees against the Claimants.

Respondents Aegon and Jackson requested a dismissal of all claims raised against them by Claimants.

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.

Prior to the commencement of the evidentiary hearing, NASD Regulation, Inc. was informed that the Claimants entered into a settlement agreement with the Respondent Aegon and the Respondent Jackson for the time she was employed at Aegon.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

All claims against the Respondents Verola, Great American and Jackson be and hereby are dismissed with prejudice as the claims were barred by Rule 10304 of the Code of Arbitration Procedure.

The Claimants' request for punitive damages is denied.

Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$2,000.00 (two pre-hearing conferences with the panel x \$500.00 plus two hearing sessions x \$500.00) are assessed as follows:

The Claimants are assessed the sum of \$667.00 less the \$500.00 previously deposited in partial satisfaction thereof leaving a balance due in the sum of \$167.00.

Respondent Great American is assessed the sum of \$667.00.

The Respondent Verola is assessed the sum of \$666.00:

The Respondent Aegon is assessed the sum of \$300.00 representing the member surcharge pursuant to Rule 10333 of the Code.

The Respondent GAFN is assessed the sum of \$300.00 representing the member surcharge pursuant to Rule 10333 of the Code.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/S/

Public

Robert S. Bernard, Esq.

/S/

Industry

Sharon S. Pettit

/S/

Public

Muriel Desloovere, Esq.

Date of Decision: July 31, 1997