

**N.A.S.D. AWARD**

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

**In the Matter of the Arbitration Between**

**Name of Claimant**

Shallowford Orthopedic Clinic, P.A.

96-03866

**Names of Respondents**

World Invest Corporation  
Henry F. Tegler

**Name of Third Party Respondent**

Kenneth A. Lehman

**REPRESENTATION**

For Claimant: Robert H. Putnam, Jr., Esq., Atlanta, Georgia.

For Respondents World Invest Corporation ("World") and Henry F. Tegler ("Tegler"): William Sumner Scott, Esq. of The Scott Law Firm, Hollywood, Florida until March 6, 1998 at which time Mr. Scott withdrew his representation of these Respondents. Thereafter, Respondents World and Tegler were represented by Mr. Tegler.

Third Party Respondent Kenneth A. Lehman ("Lehman") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: August 30, 1996.

Claimant's Submission Agreement signed on: September 16, 1996.

Statement of Answer filed by Respondent Tegler on: December 24, 1996.

Respondent Tegler's Submission Agreement signed on: November 26, 1996.

Statement of Answer filed by Respondent World on: December 24, 1996.

Respondent World's Submission Agreement signed on: November 26, 1996.

Third Party Claim filed by Respondent World on: August 21, 1997.

Statement of Answer and Counterclaim filed by Third Party Respondent Lehman on: November 13, 1997.

Third Party Respondent Lehman did not file an executed Submission Agreement.

#### HEARING INFORMATION

Four hearing sessions were conducted in this matter on March 20, 1997 and March 12, 1998 in Atlanta, Georgia.

#### CASE SUMMARY

Claimant alleged that he was a Georgia resident who made a solicited purchase of limited partnership interests at a price of \$30,000.00 in January, 1994 and an additional \$20,000.00 purchase in July, 1994 and the partnership completely failed and Claimant lost his net investment. Claimant next alleged that he later discovered that Respondents' registered representative had not been registered to solicit or sell securities in Georgia at the time the transaction was first solicited or when it took place and Respondent World Invest Corporation was fully aware of the failure to register, but submitted the transaction for processing anyway. Moreover, Claimant asserted that World Invest Corporation and its president, Henry Tegler, who personally conducted due diligence on the specific partnership in question, failed to perform that investigation adequately and proper due diligence would have revealed sufficient problems with the partnership so that it never would have been offered by Respondents or purchased by Claimant.

Claimant next alleged that he tendered return of the securities. Claimant further asserted Henry Tegler is directly liable to Claimant for his losses because of his position as a control person pursuant to 15 U.S.C Section 78(i) and O.C.G.A. 10-5-14(e) and because his personal negligence in performing due diligence caused Claimant to lose his investment. Claimant requested an award against Respondents jointly and severally.

Respondents denied all allegations contained in the Statement of Claim and maintained that World did conduct its due diligence and the offering documents fully described the risks and the Claimant elected to accept the risks of the investment. Respondents next maintained that they did not make any fraudulent promises of investment return to Claimant and denied that the investment was unsuitable or carried inappropriate risk. Respondent Tegler further asserted that none of his conduct with regard to the due diligence performed by him was performed in his personal capacity and his actions were in the good faith pursuit of his duties and responsibilities.

Respondent World asserted that Kenneth Lehman was the registered representative of World responsible for the sale of the securities at issue in this case to Claimant. Respondent World asserted a third party claim against Lehman for indemnification, subrogation and contribution for any damages, restitution, or other award made against it as a result of the failure of Respondent Lehman to be properly registered in all applicable jurisdictions or his failure to properly deliver and explain the offering documents to Claimant prior to the sale of any security sold by him to Claimant, or to determine the suitability of the security for the Claimant.

Third Party Respondent Lehman maintained that World improperly supervised him and is liable to the Claimant and World ineffectively and inaccurately advised Lehman that he could sell a security in Georgia. Third Party Respondent Lehman further maintained that World failed to perform adequate due diligence and withheld adverse financial information concerning the investment at issue from him and the Claimant.

**RELIEF REQUESTED**

Claimant requested rescission of the transactions pursuant to O.C.G.A. Section 10-5-14 (a) and a return to him of his net losses of \$48,800.00, along with reasonable attorneys' fees of at least \$9,495.00 and pre-judgment interest totaling \$13,365.25.

Respondents requested a dismissal of all claims against them and that all costs be assessed against the Claimant, including their reasonable attorneys' fees and costs. Respondent World further requested damages on its third party claim and a dismissal of the counterclaim.

Third Party Respondent Lehman requested a dismissal of all claims against him, and that all costs be assessed against World including but not limited to, reasonable attorneys' fees and costs. In addition, Third Party Respondent Lehman requested damages on his counterclaim and any relief the panel deemed appropriate.

**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 original(s) remain on file with NASD Regulation, Inc.

Third Party Respondent Lehman did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

**AWARD**

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

Respondents World and Tegler be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$28,800.00 plus pre-judgment interest in the sum of \$8,231.95 for a total due to the Claimant in the sum of \$37,031.95.

Respondents World and Tegler be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$9,495.00 representing attorneys' fees pursuant to O.C.G.A. Sections 10-5-14 (a), 10-5-3 and 10-5-12.

Respondents World and Tegler be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$520.00 representing reimbursement of the claim filing fee and hearing session deposit previously paid to NASD Regulation, Inc.

Respondent World's third party claim is dismissed in all respects.

Third Party Respondent Lehman's counterclaim is dismissed in all respects.

**FORUM FEES**

Pursuant to Rule 10332c of the Code of Arbitration Procedure, forum fees in the sum of \$1,600.00 (four sessions x \$400.00) are assessed as follows:

Respondents World and Tegler are assessed the sum of \$1,600.00 less the \$400.00 previously deposited by Claimant in partial satisfaction thereof leaving a balance due in the sum of \$1,200.00.

Respondent World is assessed the sum of \$500.00 representing the claim filing fee for the third party claim.

Third Party Respondent Lehman is assessed the sum of \$500.00 representing the claim filing fee for the counterclaim.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

**Concurring Arbitrators' Signatures**

Name	Public/Industry
/S/ _____ Chandler Bridges, Esq.	Public
/S/ _____ James H. McAvoy, Sr.	Public
/S/ _____ Thomas C. Moxley	Industry

Date of Decision: April 15, 1998