

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Atef A. Salam

96-04237

Name of Respondent

Buckhead Financial Corp.

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CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on September 23, 1996, claimant Atef Salam ("claimant"), who appeared Pro Se, alleged that respondent Buckhead Financial Corporation ("Buckhead") failed to disclose to him the risks of his investment. Claimant further alleged that in May 1990, a representative of Buckhead, Mike Myrick ("Myrick") came to see him to discuss his investment goals. Claimant also alleged that he told Myrick that preservation of capital had been his primary concern from the time that he had turned fifty. Claimant asserted that Myrick recommended four investment propositions, one of them being Orlando 311 ("Orlando"), a real estate partnership. Claimant further asserted that he declined to purchase Orlando, but purchased the other three investments.

Claimant also asserted that in November 1990, Myrick had requested a meeting to update him on the three investments. Claimant contended that during this meeting Myrick revisited the Orlando partnership and reaffirmed the safety of the investment. Claimant further contended that he finally gave in and succumbed to Myrick's relentless persuasion and about a note for \$10,000. Claimant also contended that in May 1991, he received the one and only interest payment of \$240.00. Claimant alleged that when he called Myrick he discovered that his phone had been disconnected and had taken another job. Claimant further alleged that he contacted the main office of the partnership for an explanation. Claimant also alleged that the general partner declared that some limited partners were having difficulty meeting their obligations. Claimant asserted that he asked him to make a clear statement that the present financial difficulties did not exist when he purchased the note in November 1990, but his answer was none committal. Claimant further asserted that respondent failed to investigate the Orlando partnership. Claimant also asserted that the other three investments did not fare much better.

Respondent Buckhead Financial Corporation, through its representative and President Brent Hippert, maintained that claimant acknowledged that he recognized the speculative nature and risks of loss associated with real estate investments and that he might suffer a complete loss of his investment. Respondent further maintained that claimant had acknowledged receiving, and did receive the Private Placement Memorandum ("PPM") for his investment in Orlando, which disclosed all of the attendant risks and the particular terms and conditions of his investment. Respondent also maintained that claimant is therefore, is estopped from arguing now that he was misled into making the investment or that it was unsuitable. Respondent contended that claimant made an investment in a note that agreed to pay interest

at the rate of 12%, plus minimum contingent interest at the rate of 3% and additional contingent interest at a rate to be determined by the profits if any on the real estate project. Respondent further contended that claimant is a sophisticated accredited investor, who was informed of the risks at the time he made the investment and made his own determination to seek 15% plus returns with the associated risk when a 5 year bank CD was paying less than 8%. Respondent also contended that claimant never complained about his investment to it until this claim was filed. Respondent maintained that this investment was expressly ratified as it was accepted with full knowledge of the facts and circumstances surrounding the investment.

### **RELIEF REQUESTED**

Claimant Atef Salam requested \$10,000, plus 12% compounded interest over the period covering the date the note was sold to him until this matter is resolved.

Respondent Buckhead Financial Corporation requested that the claims the claimant be dismissed in their entirety, plus expenses, costs and fees.

### **AWARD**

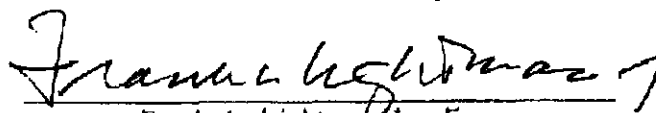
Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Frank Lightmas, was selected to review the matter in controversy between the parties set forth in Submissions to Arbitration signed by claimant Atef Salam on September 13, 1996 and by respondent Buckhead Financial Corporation on October 17, 1996 as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of claimant Atef Salam against respondent Buckhead Financial Corporation are dismissed in their entirety.
2. All other relief requests are denied.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by NASD Regulation, Inc.

### **AFFIRMATION**

I, Frank Lightmas, Jr., Esq., do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
Frank A. Lightmas, Jr., Esq.

Date of Decision: April 15, 1997