

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Patrick Giacomo and Colleen Giacomo Ingram

vs.

Case No.
96-05022

Name of Respondents

Gibraltar Securities Co.
Barry Gold

REPRESENTATION

For Claimants Patrick Giacomo and Colleen Giacomo Ingram ("Claimants") appeared Gregory G. Campisi, Esq. of the law firm Sharkey & Campisi, located in Roseland, New Jersey.

For Respondent Gibraltar Securities Co. ("Gibraltar") appeared Matthew Farley of the law firm Shanley & Fisher, located in New York, New York.

For Respondent Barry Gold ("Gold") appeared Martin Kaminsky of the law firm Pollack & Kaminsky, located in New York, New York.

CASE INFORMATION

Statement of Claim filed on: November 19, 1996.

Claimants' Submission Agreement signed on: November 05, 1996.

Statement of Answer filed by Respondent Gibraltar on: February 19, 1997.

Respondent Gibraltar's Submission Agreement signed on: April 02, 1997.

Statement of Answer filed by Respondent Gold on: March 04, 1997.

Respondent Gold's Submission Agreement signed on: March 03, 1997.

HEARING INFORMATION

Hearing Dates/Sessions: September 08, 1997 - Two Sessions

September 09, 1997 - Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that Respondents Gibraltar and Gold ("Respondents") convinced them to purchase 200 units in Datronic Equipment Income Fund XVII, LP/Datronic Rental Corp. ("Datronic") using misrepresentations and misinformation. Claimants also alleged that Respondents knew that this investment was unsuitable and inappropriate given their stated investment objectives. Claimants further alleged that they relied on this misinformation to their detriment and have lost their investment principal and Datronic is now worthless.

Claimants asserted that they are not sophisticated investors and at all times relied exclusively on the representations, recommendations, and expertise of Respondent Gold. Claimants also asserted that they told Respondent Gold that they wanted to invest the principal in mutual funds. Claimants further asserted that Respondent Gold pressured them into purchasing Datronic stating that it was a safe, risk adverse investment. Claimants alleged that on numerous occasions they asked that their investment in Datronic be sold and that on each occasion they were discouraged from selling with the assurances of Respondents that their principal was protected. Claimants further alleged that they relied on these assurances to their detriment.

Respondent Gibraltar maintained that the Superior Court of New Jersey issued an order on January 27, 1997, enjoining the Claimants from pursuing any claims arising out of events that occurred before November 05, 1990. Respondent Gibraltar further maintained that the court recognized that such claims are ineligible for arbitration under NASD rule 10304. Respondent Gibraltar also maintained that the claims arising from the investment of \$100,000 in Datronics, by Claimants, on July 01, 1989 are barred by the court order, therefore, the only claim that remains is the allegation that Respondent Gibraltar persuaded Claimants not to sell their investment in Datronics. Respondent Gibraltar maintained that at no time did Claimants place a sell order which they refused to execute.

Respondent Gibraltar maintained that Claimant Patrick Giacomo, who invested on behalf of himself and his daughter Colleen, is an experienced investor who maintained several accounts with Gibraltar Securities Co.. Respondent Gibraltar maintained that until 1992 Datronics performed as promised. Respondents maintained that in mid-1992 Datronics experienced internal problems due to misuse of funds by the corporate general partner. Respondent Gibraltar maintained that Datronics provided all investors, including Claimants, with an information sheet explaining their options, either they could liquidate their investment or continue to hold their investment. Respondent Gibraltar maintained that they advised Claimants, in good faith and to the best of their knowledge, that they should continue to hold the investment since they would receive more money than if they liquidated. Respondent Gibraltar maintained that Datronics informed them that those who held the investment did in fact receive more than those who liquidated their investment. Respondent Gibraltar maintained that they made no misrepresentations to Claimants and their advice to hold the security was a benefit to Claimants, not a detriment.

Respondent Gold maintained that most of Claimants claims have been dismissed by the Superior Court of New Jersey and are time-barred, therefore, the only claim remaining is the allegation that Respondents improperly caused Claimants to remain in the investment after November 1990. Respondent Gold maintained that he explained to Claimants that he was a broker not an analyst, therefore, he would be relying on information provided to him by Respondent Gibraltar on which to base his recommendations. Respondent Gold maintained that Claimant Patrick Giacomo, who was investing on behalf of himself and his daughter Colleen, indicated that he understood Respondent Gold's position. Respondent Gold maintained that Claimant never indicated that he was risk adverse, and that Claimants always approved

the investment decisions. Respondent Gold maintained that he never knowingly misled Claimants and always acted in good faith.

Respondent Gold maintained that Claimants indicated that they wished to obtain a greater yield on their investment. Respondent Gold maintained that he informed Claimants about Datronics as well as the risks involved, mainly that the investment was a higher risk and was highly illiquid, and provided them with a prospectus and other information regarding Datronics. Respondent Gold maintained that Claimants indicated that they understood the risks and chose to invest in Datronics. Respondent Gold maintained that in 1992, when the internal problems at Datronics were revealed he arranged for Claimants to meet with knowledgeable persons of Respondent Gibraltar and discuss whether they should take the option to liquidate or hold their investment. Respondent Gold maintained that at this meeting Claimants were advised by Respondent Gibraltar to hold the investment since it would be likely that they would receive more than if they liquidated. Respondent Gold maintained that after this meeting Claimants advised him that they wished to continue to hold the Datronics investment. Respondent Gold further maintained that the advise proved to be correct and continuing partners received more in distributions than those who liquidated.

RELIEF REQUESTED

Claimants Patrick Giacomo and Colleen Giacomo Ingram requested \$100,000.00 representing the return of their original principal investment, plus punitive damages.

Respondent Gibraltar requested that Claimants' claims be dismissed in their entirety.

Respondent Gold requested that Claimants' claims be dismissed in their entirety.

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 the NASD.

AWARD

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

- 1) Respondent Gibraltar be and is hereby liable and shall pay to Claimants Patrick Giacomo and Colleen Giacomo Ingram compensatory damages in the amount of \$22,150.00.
- 2) Respondent Gibraltar be and is hereby liable and shall pay to Claimants Patrick Giacomo and Colleen Giacomo Ingram interest on the award at 9% per annum, interest shall begin to accrue seven days from the date of the award.
- 3) All claims against Respondent Gold are denied.

- 4) Forum fees are to be assessed equally between Claimants and Respondent Gibraltar.
- 5) All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$150.00 non-refundable filing fee deposited by Claimants and have assessed the following Forum Fees:

4 Hearing sessions x \$500.00 = \$2,000.00

Total Forum Fees = \$2,000.00

- 1) Claimants be and are hereby liable and shall pay to NASD Regulation, Inc. the sum of \$1,000.00 representing one-half of the total forum fees assessed. Claimants previously deposited \$500.00 with NASD Regulation, Inc., therefore, Claimants shall pay the sum of \$500.00.
- 2) Respondent Gibraltar be and is hereby liable and shall pay to NASD Regulation, Inc. the sum of \$1,000.00 representing one-half of the total forum fees assessed.
- 3) Respondent Gibraltar be and is hereby liable and shall pay to NASD Regulation, Inc. the sum of \$300.00 representing the NASD Member Surcharge. Respondent Gibraltar previously deposited \$300.00 with NASD Regulation, Inc., therefore, no surcharge payment is required.

Fees are payable to NASD Regulation, Inc..

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ARBITRATORS' SIGNATURES

Melvin Lyon
Melvin Lyon
Public Chairperson

Mary Jo Marchisello, Esq.
Public Panelist

James J. Noone
Industry Panelist

Date of Decision: November 3, 1997

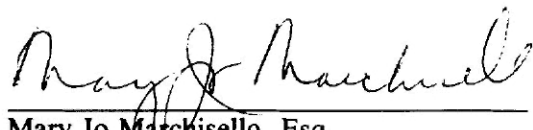
I, Melvin Lyon, do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Melvin Lyon
Melvin Lyon

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ARBITRATORS' SIGNATURES

Melvin Lyon
Public Chairperson



Mary Jo Marchisello, Esq.
Public Panelist

James J. Noone
Industry Panelist

Date of Decision: November 3, 1997

I, Mary Jo Marchisello, Esq., do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.




Mary Jo Marchisello, Esq.

ARBITRATORS' SIGNATURES

Melvin Lyon
Public Chairperson


Mary Jo Marchisello, Esq.
Public Panelist



James J. Noone
Industry Panelist

Date of Decision: November 3, 1997

I, James J. Noone, do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



James J. Noone