

AWARD

NASD Regulation, Inc.

CASE 98-00167 Harvey Rooks v. Investment Management and Research, Inc.

ATTORNEYS:

For Claimant: John C. Kelly, Esq. of Ackerman Link Sartory, West Palm Beach, Florida.

For Respondent: James D. Sallah, Esq. of Investment Management and Research, Inc. ("IMR"), St. Petersburg, Florida.

DATE FILED:

Statement of Claim filed: January 12, 1998.

Claimant's Uniform Submission Agreement signed on: June 16, 1997.

Statement of Answer filed: May 13, 1998.

Submission Agreement signed by Respondent IMR on: April 14, 1998 by Paul L. Matecki on behalf of the firm.

CASE SUMMARY: Claimant alleged the following: that IMR recommended an unsuitable transaction in Americare International, Inc. ("Americare"); that IMR made inaccurate representations and failed to make material disclosures; that IMR failed to perform any due diligence prior to making its recommendations to Claimant; and, that IMR failed to establish and enforce a supervisory system over the activities of their registered representative, James R. Shields ("Shields"), to ensure compliance with applicable securities laws.

Respondent asserted the following: that Claimant was well aware of the risk presented by the Americare transaction; that Claimant's investment objectives were speculation and short-term trading; that Shields had diligently investigated Americare prior to recommending the company to Claimant; that Claimant's losses were a result of Americare's President and Chief Executive Officer who made fraudulent and material misstatements regarding Americare's financials and converted the company's assets to his own use; that neither IMR nor Shields knew that Americare's upper level management would be committing federal crimes; and, that Claimant did not attempt to mitigate his losses by selling his depreciating shares in Americare.

Claim Data

Claim: \$11,550.00
Atty Fees: \$.00
Other: \$.00

Award Data

Award: \$3,981.52
Atty Fees: \$.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable and shall pay to the Claimant the sum of \$3,981.52 2) All other relief requests are denied.

FORUM FEES: Pursuant to Rule 10302(c) of the Code of Arbitration Procedure, the arbitrator has assessed a forum fee in the amount of \$75.00 as follows:

1. Claimant is assessed the sum of \$37.50 for which NASD Regulation, Inc. shall retain \$37.50 from the Claimant's initial hearing session deposit.
2. Respondent is assessed the sum of \$37.50.

OTHER FEES: Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent has paid to NASD Regulation, Inc. the \$400.00 member surcharge previously invoiced. The \$100.00 filing fee previously deposited with the NASD Regulation, Inc. by the Claimant shall be retained.

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

Arbitrator's Signature


Richard S. Zaifert, Esq.

2/19/99
Date of Decision