

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Cecil O. Harrelson, Cecil O. Harrelson, IRA
Betty S. Harrelson and Betty S. Harrelson, IRA

98-00175

Names of Respondents

Aragon Financial Services, Inc.
Clarence Lee Brown

REPRESENTATION

For Claimants: Jeffrey P. Coleman, Esq. of Coleman Law Firm, Clearwater, Florida.

For Respondent Aragon Financial Services, Inc. ("Aragon"): Scott L. Warfman, Esq. of Scott L. Warfman, P.A., Miami, Florida.

For Respondent Clarence Lee Brown ("Brown"): Henry L. Paul, Esq. of Paul & Singer, P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed: January 15, 1998.

Claimants' Submission Agreement signed: January 7, 1998.

Respondent Aragon's Statement of Answer and Affirmative Defenses filed: April 30, 1998.

Respondent Aragon's Submission Agreement signed: April 2, 1998.

Claimants' Response to Respondent Aragon's Answer and Affirmative Defenses filed: July 31, 1998.

Respondent Brown's Statement of Answer and Defenses filed: April 17, 1998.

Respondent Brown's Amended Statement of Answer and Defenses filed: May 7, 1998.

Respondent Brown's Submission Agreement signed: April 10, 1998.

Claimants' Response to Respondent Brown's Answer and Defenses filed: May 6, 1998.

Claimants' Response to Respondent Brown's Amended Answer and Defenses filed: May 18, 1998.

HEARING INFORMATION

On June 30, 1998 and September 22, 1998, the arbitration panel conducted telephonic pre-hearing conferences which lasted one (1) session each.

On October 30, 1998, the Chairperson conducted a telephonic pre-hearing conference which lasted one (1) session.

On November 9 and 10, 1998 and June 21 and 22, 1999, the evidentiary hearing which lasted eight (8) sessions was conducted in Tampa, Florida.

CASE SUMMARY

Claimants alleged the following: Respondent Aragon through their registered representative, Respondent Brown, made certain misrepresentations and omissions of material facts that were designed to induce the Claimants to establish and maintain an account relationship with the Respondents. In addition, Respondent Aragon, through its registered representative, Respondent Brown, sold the Claimants products which were not suitable or consistent with the investment goals and objectives of the Claimants.

The Claimants were in their early fifties when they entrusted nearly all of their life savings, in the amount of \$80,000.00, to the Respondents. The Respondents recommended the purchase of units in St. Louis Leasing Corp. Arch Funds, a single limited partnership type investment, which later declared bankruptcy. The Claimants alleged that Respondent Brown failed to inform them of the significant risk inherent in limited partnership investments.

Respondent Aragon alleged the following: Claimants were not inexperienced investors as they had an investment history which included realizing losses in relatively conservative investments. Further, Claimants had known Respondent Brown for approximately five years. Assuming arguendo that the Claimants thought their investments were essentially risk-free, the governing legal standard is not whether the Claimants subjectively believed their investments to be essentially without risk, rather it is an objective test of what a reasonable person would believe under all of the relevant facts and circumstances. Claimants, at the time of the subject investments, repeatedly represented themselves to be of substantial net worth, and capable of bearing and understanding the risks inherent in their investment. These representations were reasonably relied upon by Respondent Aragon. Therefore, the Claimants should not be permitted to maintain this lawsuit.

Respondent Brown alleged the following: The Claimants were fully advised of the risks of their investment in St. Louis Leasing Corp. Arch Funds. Respondent Brown never exercised any discretionary authority over the Claimants' accounts. Claimants exercised control over their portfolio and insisted on changes at various times. Further, Claimants had complete access to all relevant information concerning the investment, including its risks, and acknowledged their review of the material. Furthermore, Respondent Brown provided Claimants with a private placement memorandum with respect to each of Claimants' investments, which specifically detailed all of the known risk factors. Respondent Brown made no misrepresentations and provided the Claimants with all appropriate information. A review of the facts reveals that the Claimants do not meet the necessary criteria to recover on their claim.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$79,781.88, punitive damages in the amount of \$20,000.00, costs, expenses and disbursements, reimbursement of Claimants' filing and forum fees and such other relief deemed appropriate.

Respondent Aragon requested that the claim be dismissed with prejudice, costs, and such other relief deemed appropriate.

Respondent Brown requested that the claim be dismissed in its entirety, costs and attorneys' fees.

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 copies of the Award while the originals remain on file with NASD Regulation, Inc.

On or about September 22, 1998, Respondent Aragon filed a motion to postpone the evidentiary hearings scheduled for October 15 and 16, 1998 which was granted by the panel.

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:

Claimants' Statement of Claim is dismissed in its entirety.

Claimants' request for punitive damages is denied.

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

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code"), forum fees in the amount of \$5,300.00 (8 sessions x \$500.00 plus 2 pre-hearing conferences with the panel x \$500.00 plus 1 pre-hearing conference with the Chairperson x \$300.00) are assessed as follows:

Claimants are assessed the sum of \$5,300.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited by Claimants in partial satisfaction thereof leaving a balance due in the sum of \$4,800.00.

OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimants have paid to NASD Regulation, Inc. the claim filing fee of \$150.00.

Pursuant to Rule 10333 of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$1,000.00 member surcharge previously invoiced.

Pursuant to Rule 10333(d) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$600.00 pre-hearing process fee previously invoiced.

Pursuant to Rule 10333(d) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$1,500.00 hearing process fee previously invoiced.

Pursuant to Rule 10319(b) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$500.00 adjournment fee previously invoiced.

Respondent Brown has paid administrative costs in the amount of \$35.00 to NASD Regulation, Inc.

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

Concurring Arbitrators' Signatures

_____/S/_____
John R. Phillips, Esq.

Public/Industry

Public/Chairperson

_____/S/_____
Vernon Allen

Public/Panelist

_____/S/_____
Paul Lilling

Industry/Panelist

Date of Decision: August 10, 1999

Page Four
Award 98-00175

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code"), forum fees in the amount of \$5,300.00 (8 sessions x \$500.00 plus 2 pre-hearing conferences with the panel x \$500.00 plus 1 pre-hearing conference with the Chairperson x \$300.00) are assessed as follows:

Claimants are assessed the sum of \$5,300.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited by Claimants in partial satisfaction thereof leaving a balance due in the sum of \$4,800.00.

OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimants have paid to NASD Regulation, Inc. the claim filing fee of \$150.00.

Pursuant to Rule 10333 of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$1,000.00 member surcharge previously invoiced.

Pursuant to Rule 10333(d) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$600.00 pre-hearing process fee previously invoiced.

Pursuant to Rule 10333(d) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$1,500.00 hearing process fee previously invoiced.

Pursuant to Rule 10319(b) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$500.00 adjournment fee previously invoiced.

Respondent Brown has paid administrative costs in the amount of \$35.00 to NASD Regulation, Inc.

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

Concurring Arbitrators' Signatures


John R. Phillips, Esq.


Vernon Allen


Paul Lilling

Public/Industry

Public/Chairperson

Public/Panelist

Industry/Panelist

Date of Decision: August 6, 1999

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code"), forum fees in the amount of \$5,300.00 (8 sessions x \$500.00 plus 2 pre-hearing conferences with the panel x \$500.00 plus 1 pre-hearing conference with the Chairperson x \$300.00) are assessed as follows:

Claimants are assessed the sum of \$5,300.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited by Claimants in partial satisfaction thereof leaving a balance due in the sum of \$4,800.00.

OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimants have paid to NASD Regulation, Inc. the claim filing fee of \$150.00.

Pursuant to Rule 10333 of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$1,000.00 member surcharge previously invoiced.

Pursuant to Rule 10333(d) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$600.00 pre-hearing process fee previously invoiced.

Pursuant to Rule 10333(d) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$1,500.00 hearing process fee previously invoiced.


Pursuant to Rule 10319(b) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$500.00 adjournment fee previously invoiced.

Respondent Brown has paid administrative costs in the amount of \$35.00 to NASD Regulation, Inc.

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

Concurring Arbitrators' Signatures

John R. Phillips, Esq.


Vernon Allen

Public/Industry

Public/Chairperson

Public/Panelist

Industry/Panelist

Paul Lilling

Date of Decision: 8/6/99

Page Four
Award 98-00175

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure (the "Code"), forum fees in the amount of \$5,300.00 (8 sessions x \$500.00 plus 2 pre-hearing conferences with the panel x \$500.00 plus 1 pre-hearing conference with the Chairperson x \$300.00) are assessed as follows:

Claimants are assessed the sum of \$5,300.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited by Claimants in partial satisfaction thereof leaving a balance due in the sum of \$4,800.00.

OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimants have paid to NASD Regulation, Inc. the claim filing fee of \$150.00.

Pursuant to Rule 10333 of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$1,000.00 member surcharge previously invoiced.

Pursuant to Rule 10333(d) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$600.00 pre-hearing process fee previously invoiced.

Pursuant to Rule 10333(d) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$1,500.00 hearing process fee previously invoiced.

Pursuant to Rule 10319(b) of the Code, Respondent Aragon has paid to NASD Regulation, Inc. the \$500.00 adjournment fee previously invoiced.

Respondent Brown has paid administrative costs in the amount of \$35.00 to NASD Regulation, Inc.

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

Concurring Arbitrators' Signatures

Public/Industry

John R. Phillips, Esq.

Public/Chairperson

Vernon Allen

Public/Panelist

Paul Lilling
Paul Lilling

Industry/Panelist

Date of Decision:

August 5, 1999