

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Name of Claimants

Dean Wynn, Margaret Wynn and Quentin J. Fields,

and

98-00357

Name of Respondent

WMA Securities, Inc.,

REPRESENTATION OF PARTIES

Dean Wynn, Margaret Wynn and Quentin J. Fields (collectively as "Claimants") were represented by Kalju Nekvasil, Esq. and Stephen Krosschell, Esq., Goodman & Nekvasil, P.A., Clearwater, Florida and Patrick G. Moeller, Esq., Hamilton, Ohio.

WMA Securities, Inc., ("Respondent") was represented by Kevin R. McDermott, Esq. and Nicholas C. Cavalaris, Esq., Schottenstein, Zox & Dunn, P.A., Columbus, Ohio.

CASE INFORMATION

The Statement of Claim was filed on or about January 28, 1998. The First Amended Statement of Claim was filed on or about April 14, 1998. Submission Agreements of Dean Wynn and Margaret Wynn were signed on January 12, 1998. Submission Agreement of Quentin J. Fields was signed on March 10, 1998.

The Statement of Answer to First Amended Statement of Claim was filed by Respondent WMA Securities, Inc. on May 20, 1998.

HEARING INFORMATION

Pre-hearing conferences were held on November 24, 1998, for one (1) session and January 5, 1999, for one (1) hearing session with Charles D. Underwood, Jr., Esq., presiding. An telephonic administrative conference was held on August 26, 1998 for one (1) session with the entire panel.

The hearing was held on February 16, 1999, for two (2) sessions, February 17, 1999, for two (2) sessions, and February 18, 1999, for two (2) sessions in Cincinnati, Ohio for a total of two (2) pre-hearing and seven (7) hearing sessions.

CASE SUMMARY

Claimants alleged that Respondent WMA Securities, Inc., acting through Scott Thomas Rothfuss, recommended that Claimants invest in unregistered, fraudulent promissory notes issued by First Lenders Indemnity Corporation ("FLIC"). Claimants alleged that Respondent WMA Securities, Inc. made false representations to Claimants in connection with these recommendations, including, *inter alia*, that these promissory notes were conservative, safe investments, that and that FLIC and its principals had a highly successful track record. Claimants further alleged that Respondent failed to conduct a proper due diligence review of these promissory notes and failed to make material disclosures to Claimants concerning their lack of due diligence and the background of the principals of FLIC. Specifically, Respondent failed to disclose that FLIC was a Ponzi scheme, that numerous state agencies had brought administrative actions against FLIC for selling unregistered securities, and that the FLIC promissory notes were not registered in violation of federal and Ohio law. Claimants specifically alleged that Rothfuss' supervisor, Bret Sander, also marketed FLIC promissory notes.

Claimants alleged that WMA Securities, Inc.'s actions violated the Ohio Securities Act and Federal Securities laws. Claimants also brought claims of breach of contract, common law fraud, breach of fiduciary duty, and negligence and gross negligence. Claimants alleged that Respondent was responsible for the actions of Rothfuss under the doctrines of *respondeat superior*, apparent authority, and inherent agency power. Claimants further alleged that WMA Securities, Inc. was a controlling person under the Ohio Securities Act over the activities of Rothfuss and that WMA Securities, Inc. violated the Ohio Securities Act and was liable pursuant to Claimants' common law claims because it failed to properly supervise Rothfuss.

Respondent WMA Securities, Inc. denied each and every allegation of wrongdoing contained in the Statement of Claim and Amended Statement of Claim. Further, Respondent WMA Securities, Inc. asserted numerous affirmative defenses, including, ratification, statutes of limitation, failure to plead fraud claims with the requisite specificity and particularity, and improper joinder. Further, WMA Securities, Inc. alleged that the NASD did not have jurisdiction to hear this action because the parties did not enter into a written agreement and all of the Claimants were not customers of WMA Securities, Inc.

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$283,485.77, lost opportunity damages and rescission interest under the Ohio Securities Act, attorney's fees and costs, punitive damages, and such other relief as is deemed proper and necessary by the arbitration panel.

Respondent WMA Securities, Inc. requested the dismissal of the claims. Respondent WMA Securities, Inc. further requested that the arbitration panel award WMA Securities, Inc. its costs and attorney's fees incurred in defending against the claims.

OTHER ISSUES CONSIDERED & DECIDED

Respondent WMA 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 is bound by the determination of the arbitration panel on all issues submitted.

At the hearing, Respondent WMA Securities, Inc. conceded that Claimant Fields was a customer of the firm and that the arbitration panel had jurisdiction over Fields' claims. The arbitration panel further finds that it has jurisdiction over the Wynns' claims and denies the Motion to Dismiss that WMA Securities, Inc. filed at the final hearing.

Prior to the hearing, Respondent WMA Securities, Inc. filed a Motion to Sever Claims, a Motion to Exclude Claimants' Hearing Exhibits, and a Motion to Quash Subpoenas issued to Eugene Eusanio, James M. Turner, Daniel Scarbury and Bret Sander. Further, Eusanio filed a Motion to Quash his subpoena. The arbitration panel denied all of these motions prior to the hearing.

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 WMA Securities, Inc. shall be and hereby is liable for and shall pay to Claimants Dean Wynn and Margaret Wynn the sum of \$199,000.00 (**One Hundred Ninety Nine Thousand Dollars**) as compensatory damages.
2. Respondent WMA Securities, Inc. shall be and hereby is liable for and shall pay to Claimant Quentin J. Fields \$65,500.00 (**Sixty Five Thousand Five Hundred Dollars**) as compensatory damages.
3. Respondent WMA Securities, Inc. shall be and hereby is liable for and shall pay to Claimants Dean Wynn, Margaret Wynn and Quentin J. Fields the sum of \$80,000.00 (**Eighty Thousand Dollars**) as attorney's fees and costs.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were two (2) sessions x \$300.00 and seven (7) sessions x \$750.00 = \$5,850.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure

(the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$200.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. Respondent WMA Securities, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$5,100.00 as the balance due for forum fees.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. has paid to the NASD the member surcharge in the amount of \$1,500.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. has paid to the NASD the process fees in the total amount of \$2,100.00 previously invoiced.

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

Dated:

/s/ Charles D. Underwood
Charles D. Underwood, Esq.
Public Arbitrator, Presiding Chair

March 16, 1999

/s/ William W. Oliver
William W. Oliver
Public Arbitrator

March 10, 1999

/s/ Robert Economou
Robert Economou
Industry Arbitrator

March 10, 1999

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 98-00357
Award Page 4 of 4

(the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. Respondent WMA Securities, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$5,100.00 as the balance due for forum fees.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. has paid to the NASD the member surcharge in the amount of \$1,500.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. has paid to the NASD the process fees in the total amount of \$2,100.00 previously invoiced.

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



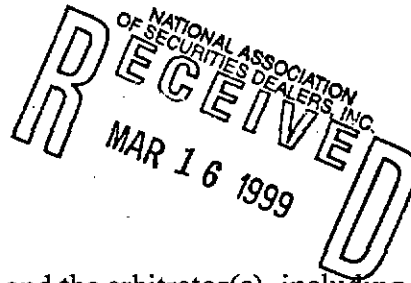
Charles D. Underwood, Esq.
Public Arbitrator, Presiding Chair

Dated:

March 16, 1999

William W. Oliver
Public Arbitrator

Robert Economou
Industry Arbitrator



(the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$200.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. Respondent WMA Securities, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$5,100.00 as the balance due for forum fees.

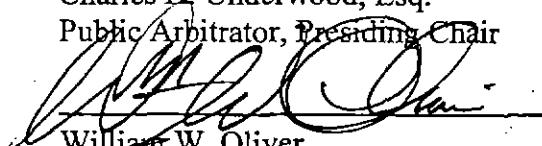
OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. has paid to the NASD the member surcharge in the amount of \$1,500.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. has paid to the NASD the process fees in the total amount of \$2,100.00 previously invoiced.

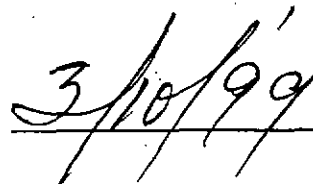
Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

Charles D. Underwood, Esq.
Public Arbitrator, Presiding Chair


William W. Oliver
Public Arbitrator

Robert Economou
Industry Arbitrator


3/10/99

(the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$200.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. Respondent WMA Securities, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$5,100.00 as the balance due for forum fees.

OTHER FEES


Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. has paid to the NASD the member surcharge in the amount of \$1,500.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent WMA Securities, Inc. has paid to the NASD the process fees in the total amount of \$2,100.00 previously invoiced.

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

Dated: _____

Charles D. Underwood, Esq.
Public Arbitrator, Presiding Chair

William W. Oliver
Public Arbitrator


Robert Economou
Industry Arbitrator

3-10-99