

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Lina L. Estrada and Edmundo Catacutan Estrada

and

99-04410
Kansas City, Missouri

Name of Respondents

Fairchild Financial Group, Inc. formerly known as VTR Capital, Inc.
Greg Garson
Edward McCune
Wallace Conley
Lorette D. Farris
Gregory T. Souran
William G. Goble
Felicia A. Antonio
David W. Noble

Name of Third Party Respondent

Bryon L. Koepke

REPRESENTATION OF PARTIES

Lina L. Estrada and Edmundo Catacutan Estrada ("**Claimants**") was represented by Ryan K. Bakhtiari, Esq. and Robert A. Uhl, Esq., Aidikoff & Uhl, Beverly Hills, California.

Fairchild Financial Group, Inc. formerly known as VTR Capital, Inc. ("**Respondent Fairchild**") did not appear at the hearing or file a responsive pleading in this matter.

Greg Garson ("**Respondent Garson**"), Edward McCune ("**Respondent McCune**"), Wallace Conley ("**Respondent Conley**") and Lorette D. Farris ("**Respondent Farris**") were represented by Mark F. Raymond, Esq., Tew Cardens Rebak Kellogg Lehman Demaria & Tague, L.L.P., Miami, Florida.

Gregory T. Souran ("**Respondent Souran**") was represented by John L. Milling, Esq., Milling Law Offices, Edgewater, New Jersey.

William G. Goble ("**Respondent Goble**") appeared *pro se*.

— Felicia A. Antonio (“**Respondent Antonio**”) was represented by John D. Singer, Esq., Proskauer Rose LLP, New York, New York.

David W. Noble (“**Respondent Noble**”) did not appear at the hearing or file a responsive pleading in this matter.

Bryon L. Koepke (“**Third Party Respondent**”) was represented by Roger N. Walter, Esq., Morris, Laing, Evans, Brock & Kennedy, Chartered, Topeka, Kansas.

CASE INFORMATION

The Statement of Claim was filed on or about September 28, 1999. First Amended Statement of Claim was filed on or about February 14, 2000. Claimants’ Opposition to Respondent Felicia A. Antonio’s Motion to Dismiss was filed on or about April 24, 2000. Claimants’ Motion to Bar Fairchild Financial Group, Inc. formally known as VTR Capital, Inc., Edward McCune, Wallace Conley, Lorette D. Farris and David William Noble From Presenting any Matter, Arguments, or Defenses at the Hearing Pursuant to NASD Code of Arbitration Procedure Section [sic] 10314(B)(2)(c) was filed on or about December 4, 2000. Claimants’ Opposition to Respondent Wallace G. Conley’s Motion to Dismiss was filed on or about December 4, 2000. Submission Agreement of Claimants Lina L. Estrada and Edmundo Catacutan Estrada was signed on June 15, 1999.

Answer of Greg Garson to the First Amended Statement of Claim, Motion to Dismiss Federal Securities Claims and Third Party Claim against Byron [sic] Koepke was filed on or about February 28, 2000. Greg Garson’s Answer to Counterclaim of Bryon Koepke and Opposition to Motion to Dismiss Third Party Claim was filed on or about July 3, 2000. Submission Agreement of Respondent Greg Garson was signed on February 14, 2000.

Statement of Answer of Gregory T. Souran was filed on or about April 17, 2000. Motion to Dismiss Statement of Claim against Gregory T. Souran was filed on or about May 12, 2000. Submission Agreement of Respondent Gregory T. Souran was signed on April 14, 2000.

Response of William G. Goble was filed on or about April 20, 2000.

Respondent Antonio’s Answer to, and Motion to Dismiss, the Statement of Claim was filed on or about April 14, 2000. Respondent Antonio’s Reply to Claimants’ Lina L. Estrada and Edmundo Catacutan Estrada’s Opposition to Respondent Antonio’s Motion to Dismiss was filed on or about July 10, 2000.

Answer of Bryon Koepke to Third Party Claim of Respondent Greg Garson and Third Party Counterclaim was filed on or about April 20, 2000. Motion to Dismiss Third Party Claim was filed on or about April 20, 2000.

CASE SUMMARY

Claimants alleged that Respondents made unsuitable recommendations of speculative stocks to them and breached their fiduciary duty to them. It was also alleged that Respondents made material misrepresentations and failed to disclose material facts including, but not limited to, remunerations, concessions and commissions received in connection with the sale of the securities sold to the Claimants. Claimants further alleged that Respondents VTR, McCune, Conley, Farris, Souran, Goble, Antonio and Noble failed to properly supervise Respondent Garson.

Respondent Garson and pursuant to the stipulation of the parties set forth below, Respondents McCune, Conley and Farris denied the allegations set forth in the First Amended Statement of Claim. Respondents stated that Claimants authorized all of the transactions at issue in this matter. It was also stated that the securities recommended to Claimants were appropriate in light of the Claimants' often stated investment objectives. Respondents asserted affirmative defenses, including but not limited to, contributory negligence and comparative fault; assumption of risk; estoppel, waiver, laches and ratification; and failure to mitigate.

In his Third Party Claim, Respondent Garson sought contribution and indemnification to the full extent of the law from Third Party Respondent Koepke in the event that he is found liable in any manner based on the fact that Third Party Respondent Koepke, Claimants' son-in-law, introduced Claimants to him and disclosed to Respondent Garson, Claimants' history of having previously purchased and wished to continue to purchase, speculative stocks, among others.

In his Answer to the Third Party Claim, Third Party Respondent Koepke stated that the allegations asserted in the First Amended Statement of Claim pertain only to transactions which occurred in Claimants' accounts initiated by Garson after Third Party Respondent Koepke's departure from VTR. Third Party Respondent Koepke expressly stated that he told Respondent Garson the following:

- i. That the Estradas were not interested in speculative investments, but were only interested in conservative quality investments since they were nearing retirement;
- ii. That beyond their current limited position in Interiors, Inc. (\$10,000), they were not interested in VTR "house" stock; and
- iii. That Respondent Garson should not call the Estradas or solicit them for any transactions since they were both extremely busy as practicing medical doctors, and that they would call him if they were interested.

RELIEF REQUESTED

In the First Amended Statement of Claim, Claimants requested damages and recovery against Respondents and each of them, jointly and severally, as follows:

1. General and compensatory damages in an amount according to proof, but not less than \$161,000 against VTR and Garson;
2. All profits Respondents, and each of them, generated from the Account in an amount according to proof but not less than the total commissions, fees and remunerations generated in all transactions VTR acted as a market maker, principal or underwriter in Claimants' accounts;
3. The lost opportunity cost of what the \$235,000 invested would have earned if invested properly from the date of each purchase to the date of any arbitration award, in an amount according to proof;
4. Cost of proceedings;
5. Punitive damages in an amount according to proof;
6. Interest at the legal rate on all sums recovered;
7. Attorneys fees and costs; and
8. Such other and further relief as this panel deems just and appropriate.

Respondent Garson requested that this Panel enter an award dismissing the claims being asserted by Claimants and assessing all reasonable fees and costs incurred by Respondent against the Claimants. It was further requested that, to the extent to which he is found liable for any of the losses or damages being sought by Claimants seeks full and complete contribution and indemnification from Third Party Respondent Koepke.

Third Party Respondent Koepke requested dismissal of Respondent's Third Party Claim, damages and attorneys fees.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators could not determine that Respondent Fairchild Financial Group, Inc. formerly known as VTR Capital, Inc. has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators also could not determine that Respondent Fairchild Financial Group, Inc. formerly known as VTR Capital, Inc. had received due notice of the hearing as required under Rule 10315 of the Code.

Respondents Fairchild Financial Group, Inc. formerly known as VTR Capital, Inc. Edward McCune, Wallace Conley, Lorette D. Farris, William Goble, Felicia A. Antonio, David W. Noble and Third Party Respondent Bryon L. Koepke did not file with the NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the arbitration panel on all issues submitted.

- By letter dated October 25, 2000, the parties were advised of the Arbitration Panel's decision on the Motions to Dismiss filed by Respondents Souran, Antonio, Goble and Garson and Third Party Respondent Koepke as follows:

The panel has had a telephone conference and has decided that respondents Souran, Antonio and Goble should be dismissed. We overruled the pleadings of Garson and Koepke.

At the commencement of the hearing, Claimants withdrew the claims of suitability asserted in this matter. Claimants' allegations of fraud and breach of fiduciary duty remained at issue.

At the hearing Claimants stipulated with counsel for Respondents McCune, Farris and Conley to accept and adopt the Answer filed on behalf of Respondent Garson as the Answer of Respondents McCune, Farris and Conley.

During the course of the hearing, the Arbitration Panel dismissed the Third Party Claim asserted against Third Party Respondent Koepke.

At the conclusion of Claimants' case in chief, Respondents Greg Garson, Edward McCune, Wallace Conley and Lorette D. Farris asserted a Motion to Dismiss. After considering the evidence presented, the pleadings and the arguments made by counsel on this Motion, the undersigned arbitrators decided to **grant** the Motion to Dismiss.

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 Dispute Resolution, Inc. (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. The Motion to Dismiss asserted by Respondents Greg Garson, Edward McCune, Wallace Conley and Lorette D. Farris shall be and hereby is granted.
2. Respondent Greg Garson shall be and hereby is liable for and shall pay to Third Party Respondent Bryon Koepke's attorneys' fees as set forth in the Affidavit of Fees to be submitted by Mr. Walter.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

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, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$300.00
Third Party Claim filing fee	= \$300.00
Counter Claim filing fee	= \$250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Fairchild Financial Group, Inc. formerly known as VTR Capital, Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s): May 4, 2000	1 session
Six (6) Hearing sessions x \$1,125.00	= \$6,750.00
Hearing Date(s): December 5, 2000	2 sessions
December 6, 2000	2 sessions
<u>December 7, 2000</u>	<u>2 sessions</u>

- Total Forum Fees = \$7,875.00

The Arbitration Panel has assessed \$7,875.00 of the forum fees jointly and severally to Respondents Greg Garson, Edward McCune, Wallace Conley and Lorette D. Farris.

Fee Summary

Claimants, Lina L. Estrada and Edmundo Catacutan Estrada, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$1,125.00

Respondent, Fairchild Financial Group, Inc. formerly known as VTR Capital, Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,600.00

Respondent, Greg Garson, shall be and hereby is liable for:

Third Party Claim Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$2,375.00
Balance applied to forum fees below	= \$2,075.00

Respondents Greg Garson, Edward McCune, Wallace Conley and Lorette D. Farris shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$7,875.00
<u>Less payments</u>	= \$2,075.00
Balance Due NASD Dispute Resolution, Inc.	= \$5,800.00

All balances are due to NASD Dispute Resolution, Inc.

Dated:

/s/ Keith U. Martin

Keith U. Martin, Esq.
Public Arbitrator, Presiding Chair

December 11, 2000

/s/ Ira B. Hyde

Ira B. Hyde
Public Arbitrator

December 12, 2000

/s/ William Richard Smith

William Richard Smith
Industry Arbitrator

December 12, 2000

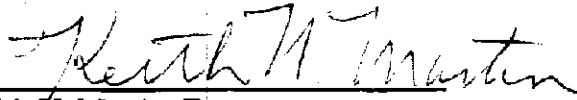
NASD Dispute Resolution, Inc.

Arbitration No. 99-04410

Award Page 8 of 8

All balances are due to NASD Dispute Resolution, Inc.

Dated:



Keith U. Martin, Esq.

Public Arbitrator, Presiding Chair

12-11-00

Ira B. Hyde
Public Arbitrator

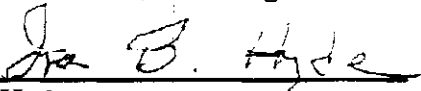
William Richard Smith
Industry Arbitrator

NASD Dispute Resolution, Inc.
Arbitration No. 99-04410
Award Page 8 of 8

All balances are due to NASD Dispute Resolution, Inc.

Dated:

Keith U. Martin, Esq.
Public Arbitrator, Presiding Chair



Ira B. Hyde
Public Arbitrator

Dec 12, 2000

William Richard Smith
Industry Arbitrator

NASD Dispute Resolution, Inc.

Arbitration No. 99-04410

Award Page 8 of 8

All balances are due to NASD Dispute Resolution, Inc.

Dated:

Keith U. Martin, Esq.

Public Arbitrator, Presiding Chair

Ira B. Hyde

Public Arbitrator

William Richard Smith

William Richard Smith

Industry Arbitrator

Dec 12, 2000