

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant(s)

Ruth Clemmons and Paul Clemmons

and

00-04454  
Kansas City, Missouri

Name of Respondent(s)

Quest Capital Strategies, Inc.  
Matthew Mikesch

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**REPRESENTATION OF PARTIES**

Ruth Clemmons and Paul Clemmons ("**Claimant**") were represented by Stuart R. Berkowitz, Esq., Platke and Berkowitz, L.L.P., St. Louis, Missouri.

Quest Capital Strategies, Inc. ("**Respondent Quest**") was represented by Richard C. Pali, Points & Authorities, Woodland Hills, California.

Matthew Mikesch ("**Respondent Mikesch**") represented himself and did not appear at the hearing.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 9, 2000. Claimants' Memorandum in Opposition to Respondent Quest Capital Strategies, Inc.'s Motion to Dismiss was filed on or about January 29, 2001. Submission Agreement of Claimant Ruth Clemmons and Paul Clemmons was signed on September 28, 2000.

Motion to Dismiss was filed by Respondent Quest Capital Strategies, Inc. on or about January 19, 2001. Submission Agreement of Respondent Quest Capital Strategies, Inc. was signed on by

Statement of Answer was filed by Respondent Matthew Mikesch on or about January 17, 2001. Submission Agreement of Respondent Matthew Mikesch was signed on January 10, 2001.

**CASE SUMMARY**

Claimants alleged that on or about July 1998, they were solicited by Respondent Mikesch to purchase an unsuitable unsecured promissory note from First American Capital Trust. It was also alleged that the note was falsely represented as totally safe and secure, when in fact, it was highly

risky. Claimants further alleged that Respondent Quest failed to supervise the activities of Respondent Mikesch.

Respondent Quest asserted a Motion to Dismiss wherein it requested that the NASD Dispute Resolution, Inc. decline to exert jurisdiction in this matter because: "...,(1) the Claimants were never at any time customers of Quest Capital, (2) Claimants never at any time signed any arbitration agreement with Quest Capital, and (3) Claimants never at any time purchased securities in connection with or offered by Quest Capital."

Respondent Mikesch denied the allegations set forth in the Statement of Claim. Respondent Mikesch specifically stated he believed that: the notes were being sold as exempt securities; that the product was fully discussed in accordance with the sales script provided by the company; and that disclosure materials were provided to Claimants.

#### **RELIEF REQUESTED**

Claimants requested an award of compensatory damages in an amount in excess of \$25,000.00; pre-award and post-award interest from the date of the original investment as allowed by law; costs of arbitration and expenses including consulting fees, expert witness fees, filing fees and any other costs deemed reasonable and just.

Respondent Quest requested that the claims asserted herein be dismissed as a not eligible for arbitration.

Respondent Mikesch requested that the claims asserted against him be denied.

#### **OTHER ISSUES CONSIDERED & DECIDED**

By letter dated May 25, 2001, the parties were advised of the Arbitrator's decision on the outstanding Motion to Dismiss as follows:

I have reviewed Respondent Quest Capital Strategies, Inc.'s Motion to Dismiss for lack of subject matter jurisdiction dated January 18, 2001, and Claimant's Memorandum in Opposition dated January 23, 2001. Respondent's motion is denied without prejudice; that is, Respondent may renew its motion and arguments at the hearing of this matter.

The undersigned arbitrator has determined that Respondent Matthew Mikesch had received due notice of the hearing as required under Rule 10315 of the NASD Code of Arbitration Procedure (the "Code") and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Quest Capital Strategies, Inc. did not file with the NASD Dispute Resolution, Inc. 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 having answered the claim, appeared and offered testimony at the hearing is bound by the determination of the arbitrator on all issues submitted.

At the hearing, Respondent Quest Capital Strategies, Inc. renewed its Motion to Dismiss for lack of subject matter jurisdiction. After considering the arguments presented on behalf of the parties, the undersigned denied the motion. Claimant's Motion for Sanctions was also denied.

### **AWARD**

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

1. Respondents Quest Capital Strategies, Inc. and Matthew Mikesch shall be and hereby are jointly and severally liable for and shall pay to Claimant Ruth Clemmons and Paul Clemmons the sum of \$33,464.25 as compensatory damages.
2. Interest at the rate of 9% per annum is awarded on the above stated sum from and inclusive of the date of the entry of this Award to and inclusive of the date this Award is paid in full.
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 = \$150.00

### **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 Quest Capital Strategies, Inc.

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

### **Forum Fees and Assessments**

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

Three (3) Pre-hearing session(s) with the arbitrator x \$450.00	= \$1,350.00
Pre-hearing conference(s):	
May 8, 2001	1 session
September 4, 2001	1 session
September 7, 2001	1 session
Two (2) Hearing sessions x \$450.00	= \$ 900.00
Hearing Date(s):	September 10, 2001 2 sessions
Total Forum Fees	= \$2,250.00

The Arbitrator has assessed \$225.00 of the forum fees to Ruth Clemmons and Paul Clemmons.

The Arbitrator has assessed \$2,025.00 of the forum fees jointly and severally to Quest Capital Strategies, Inc. and Matthew Mikesch.

### **Fee Summary**

Claimants, Ruth Clemmons and Paul Clemmons, shall be and hereby is liable for:

Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 225.00
Total Fees	= \$ 375.00
<u>Less payments</u>	= \$ 600.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$ 225.00

Respondent, Quest Capital Strategies, Inc., shall be and hereby is liable for:

Member Fees	= \$2,200.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$2,200.00
<u>Less payments</u>	= \$ 400.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,800.00

Respondents, Quest Capital Strategies, Inc. and Matthew Mikesch, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,025.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,025.00

**All balances are due to NASD Dispute Resolution, Inc.**

**ARBITRATION PANEL**

John J. Miller, Esq. - Public, Presiding Chair

**/s/ John J. Miller**

John J. Miller, Esq.

Public Arbitrator, Presiding Chair

**September 19, 2001**

Signature Date

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Respondent, Quest Capital Strategies, Inc., shall be and hereby is liable for:

Member Fees	= \$2,200.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$2,200.00
<u>Less payments</u>	= \$ 400.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,800.00

Respondents, Quest Capital Strategies, Inc. and Matthew Mikesch, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,025.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,025.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

John J. Miller, Esq. - Public, Presiding Chair

  
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John J. Miller, Esq.  
Public Arbitrator, Presiding Chair

September 19, 2001  
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Signature Date