

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

Mark C. and Pattie L. Heitzman

vs.

03-00076

Oklahoma City, Oklahoma

Respondents

1<sup>st</sup> Global Capital Corporation,  
Stephen P. Regouby d/b/a  
Union Financial Advisors, Inc., and  
National Financial Services Corporation

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Nature of the Dispute: Customers vs. Member Firms, Non-Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Mark C. and Pattie L. Heitzman ("**Claimants**") were represented by Duane W. Moss, Esq., Sandy, Utah.

1<sup>st</sup> Global Capital Corporation ("**1<sup>st</sup> Global**") and Stephen P. Regouby d/b/a Union Financial Advisors, Inc. ("**Regouby**"), hereinafter collectively referred to as ("**Respondents**"), were represented by Dennis D. Dice, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, Pennsylvania.

National Financial Services Corporation ("**National Financial**") was represented by Michael G. Shannon, Esq., Brown, Raysman, Millstein, Felder & Steiner LLP, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 31, 2002. The Submission Agreements of Claimants, Mark C. and Pattie L. Heitzman, were signed on or about December 26, 2002. Claimants' Opposition to Motion to Dismiss and Motion for a More Specific Statement of Claim was filed on or about March 26, 2003. Claimants' Motion to Bar was filed on or about March 11, 2003. Claimants' Amended and Restated Statement of Claim was filed on or about April 21, 2004.

Respondents' 1<sup>st</sup> Global Capital Corporation and Stephen P. Regouby d/b/a Union Financial Advisors, Inc.'s, Preliminary Answer, Motion to Dismiss and Affirmative Defenses was filed on or

about March 14, 2003. Respondents' 1<sup>st</sup> Global Capital Corporation and Stephen P. Regouby d/b/a Union Financial Advisors, Inc.'s Motion for More Specific Statement of Claim was filed on or about March 11, 2003. Respondents' 1<sup>st</sup> Global Capital Corporation and Stephen P. Regouby d/b/a Union Financial Advisors, Inc.'s Response to Claimants' Motion to Bar was filed on or about March 24, 2003. Respondents' Reply to Claimants' Memorandum in Opposition to Respondents' Motion to Dismiss was filed on or about June 23, 2003. Respondents' 1<sup>st</sup> Global Capital Corporation and Stephen P. Regouby d/b/a Union Financial Advisors, Inc.'s, Answer to the Amended and Restated Statement of Claim and Affirmative Defenses was filed by on or about May 24, 2004.

The Submission Agreement of Respondent, 1<sup>st</sup> Global Capital Corporation was signed on or about March 7, 2003. The Submission Agreement of Respondent, Stephen P. Regouby d/b/a Union Financial Advisors, Inc., was signed on or about March 7, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: Suitability, common law fraud and deceit, breach of fiduciary duties, professional negligence, negligent supervision, control liability, and Violations of Federal Securities Laws. Claimants alleged that the Respondents recommended investments that were unsuitable and failed to properly disclose material facts, which led to losses in their account. The causes of action related to the recommendation and purchase of various securities investments.

Unless specifically admitted in their Answer, Respondents 1<sup>st</sup> Global Capital Corporation and Stephen P. Regouby d/b/a Union Financial Advisors, Inc. denied the allegations made in the Statement of Claim and asserted the following defenses: The Statement of Claim failed to state a claim upon which relief can be granted; Claimants' actions and/or inaction, under the circumstances, constitutes a ratification of all complained of activity and, therefore, Claimants have waived all claims thereunder, and the Claimants are barred from bringing such claims under the doctrines of estoppel and/or laches against Respondents; and any alleged losses which may have occurred were the direct result of conditions and other factors beyond the control of Respondents.

Respondent, National Financial Services Corporation, did not file an Answer or a Uniform Submission Agreement.

### **RELIEF REQUESTED**

Claimants requested an award of \$256,000.00 in compensatory damages and rescission of their variable annuity contracts. Claimants also requested punitive damages, attorney's fees and costs.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorney's fees.

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

On April 4, 2003, the Claimants dismissed with prejudice, Respondent National Financial Services Corporation, as a party to this proceeding.

On July 15, 2003, the panel entered an order in regard to Respondents' 1<sup>st</sup> Global Capital Corporation and Stephen P. Regouby d/b/a Union Financial Advisors, Inc.'s Motion to Dismiss and Motion for a More Specific Statement of Claim, which reflected the following:

This matter comes on for consideration the motions to dismiss and for more specific statement of claim filed by Respondents 1<sup>st</sup> Global Capital Corporation and Stephen P. Regouby d/b/a Union Financial Advisors, Inc. Respondents' motion to dismiss is denied. Respondents' motion for a more specific statement of claim is denied. Respondents are directed to proceed with discovery in anticipation of the pre-hearing conference on August 4, 2003.

On August 25, 2003, the panel entered an order in regard to Claimants' Motion to Bar, which reflected that the Motion was denied.

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 (the "NASD").

### **AWARD**

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

1. Claimant's claims, each and all, against Respondents, 1<sup>st</sup> Global Capital Corporation, and Stephen P. Regouby d/b/a Union Financial Advisors, Inc., are dismissed with prejudice;
2. 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; and
3. 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 will retain the non-refundable filing fees for each claim:

Initial claim filing fee = \$300.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are 1<sup>st</sup> Global Capital Corporation and National Financial Services Corporation.

#### **1<sup>st</sup> Global Capital Corporation**

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	<u>2,750.00</u>
Total Member Fees	\$	5,200.00

#### **National Financial Services Corporation**

Member surcharge	\$	1,700.00
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### **Adjournment Fees**

Adjournment requested during these proceedings:

February 17-20, 2004 Hearing dates requested by Mark C. and Pattie L. Heitzman, \$ 1,125.00  
(waived by the Panel)

### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session with a single arbitrator	x	450.00	\$	450.00
June 30, 2004	1 session			
3 Pre-hearing sessions with Panel	x	1,125.00	\$	3,375.00

	August 4, 2003	1	session		
	August 25, 2003	1	session		
	February 4, 2004	1	session		
9	Hearing sessions	x	1,125.00	\$	10,125.00
	July 13, 2004	2	sessions		
	July 14, 2004	2	sessions		
	July 15, 2004	1	session		
	October 7, 2004	2	sessions		
	October 8, 2004	2	sessions		
	Total Forum Fees			\$	<u>13,950.00</u>

The Arbitration Panel has assessed \$13,950.00 of the forum fees jointly and severally to 1<sup>st</sup> Global Capital Corporation, and Stephen P. Regouby d/b/a Union Financial Advisors, Inc.

#### Fee Summary

Claimants, Mark C. and Pattie L. Heitzman, is liable for:

<u>Initial Filing Fees</u>	= \$	300.00
Total Fees	= \$	300.00
<u>Less payments</u>	= \$	<u>-1,425.00</u>
Refund due to the Claimants	= \$	1,125.00

Respondent, 1<sup>st</sup> Global Capital Corporation, is liable for:

<u>Member Fees</u>	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, 1<sup>st</sup> Global Capital Corporation, and Stephen P. Regouby d/b/a Union Financial Advisors, Inc., are jointly and severally liable for:

<u>Forum Fees</u>	= \$	13,950.00
Total Fees	= \$	13,950.00
<u>Less payments</u>	= \$	<u>-0.00</u>
Balance Due NASD Dispute Resolution	= \$	13,950.00

Respondent, National Financial Services Corporation, is liable for:

<u>Member Fees</u>	= \$	1,700.00
Total Fees	= \$	1,700.00

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<u>Less payments</u>	= \$	<u>-1,700.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

James E. Golden, Jr., Esq. - Public Arbitrator, Presiding Chair  
Wilburta Ann Willey - Public Arbitrator  
Glenn E. Johnson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ James E. Golden, Jr., Esq.  
James E. Golden, Jr., Esq.  
Public Arbitrator, Presiding Chair

10/28/04  
Signature Date

/s/ Wilburta Ann Willey  
Wilburta Ann Willey  
Public Arbitrator

10/29/04  
Signature Date

/s/ Glenn E. Johnson  
Glenn E. Johnson  
Non-Public Arbitrator

10/28/04  
Signature Date

10/29/2004  
Date of service

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Arbitration No. 03-00076  
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Less payments

Balance Due NASD Dispute Resolution

= \$  
= \$


-1,700.00  
0.00

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<u>Less payments</u>	<u>- \$</u>	<u>-1,700.00</u>
Balance Due NASD Dispute Resolution	<u>- \$</u>	<u>0.00</u>

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