

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-05648

Shiel Family Trust, Claimant v. Capital Securities of America, Inc. and Cesar P. Aquino,
Respondents

ATTORNEYS:

Claimant, Shiel Family Trust, appeared through, Howard E. Shiel, Jr., Trustee, Seattle, WA.

For Respondents, Capital Securities of America, Inc. and Cesar P. Aquino, (collectively
"Respondents"), appeared Craig G. Pelini, Esq., of the firm Pelini & Fischer, Ltd., North Canton,
OH.

NATURE OF DISPUTE: Customer v. Member and Associated Person.

DATE FILED: August 5, 2004.

CASE SUMMARY: Claimant alleged that Respondents breached their fiduciary duty and misrepresented and omitted material facts relating to the offer and sale of K-Mart and North Carolina Housing bonds. Claimant further alleged that Respondent Capital Securities of America, Inc., is liable under the doctrine of respondeat superior for the negligent conduct of its representative. Claimant maintained that as a result of Respondents' actions, the account suffered financial losses.

ARBITRATOR'S REPORT: attached Exhibit "A"

Claim Data

Claim: \$24,315.91

Claim: Rescission

Interest: Unspecified

Filing Fees: \$.00

Other: Unspecified

Award Data

Award: \$19,534.90

Award: \$.00

Interest: 8% from date of award until
award is paid in full.

Filing Fees: \$425.00

Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondents are jointly and severally liable and shall pay to the Claimant \$19,534.90. 2) Respondents are jointly and severally liable and shall pay to the Claimant interest at a rate of eight-percent (8%) from the date of this award until award is paid in full. 3) All other relief requests are denied. 4) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 5) Respondents are jointly and severally liable and shall pay Claimant \$425.00 as reimbursement of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Capital Securities of America, Inc., has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

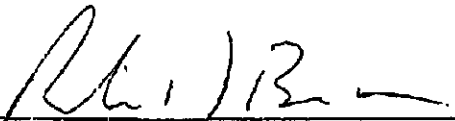
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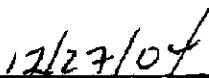
ARBITRATOR

Richard D. Brady - Sole Public Arbitrator

AFFIRMATION

I, Richard D. Brady, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Richard D. Brady


Signature Date

January 3, 2005
Date of Service (For NASD-DR office use only)

NASD-DR CASE NO. 04-05648

Shiel Family Trust vs. Capital Securities of America, Aquino

FINDINGS AND CONCLUSIONS

Mr. Aquino's initial recommendation that the Claimant (Shiel Family Trust) purchase 50,000 Kmart 8.375% due 07/01/22 (CUSIP 482584-AN-9) rated BAA3/BB+ was not unsuitable.

However, it was unsuitable for Mr. Aquino to recommend that the Claimant continue to hold the Kmart bonds after August 31, 2001, when the bonds had declined in value to \$42,500 in light of the facts that (i) Mr. Aquino told the Trustee that Kmart was experiencing some difficulties (an unrebutted allegation), (ii) the Trustee had no prior experience investing in individual bonds, and (iii) there is no evidence that Mr. Aquino disclosed the nature of "credit risk" or the basics of bond ratings.

With respect to the Kmart bonds, Claimant is entitled to damages in the amount of \$17,347.19. This amount was arrived at by calculating the value of the Kmart bonds on August 31, 2001 and subtracting the bond interest paid by the bonds and the proceeds received by the Claimant when the bonds were sold ($\$42,500 - 2,093.75 - 23,059.06 = \$17,347.19$).

Mr. Aquino's recommendation that the Claimant purchase 15,000 Charlotte NC Hsg Authority Multi Family Hsg Rev Roseland I & II 7% due 12/01/28 (CUSIP 161038-AM-6) that were non-rated housing revenue bonds secured by low income housing was unsuitable.

In January 2002, after Kmart declared bankruptcy and the Claimant sold the Kmart bonds at a substantial loss, Claimant knew or should have known that investing in individual bonds entailed risks that he was not previously aware of. At this point there arose a duty on the part of Mr. Shiel, who acknowledges being a trustee, to promptly conduct an inquiry into the nature and scope of risks that attend investing in bonds. This he failed to do and Claimant must bear 50% of the responsibility for its losses.

Accordingly, with respect to the Charlotte NC bonds, Claimant is entitled to damages in the amount of \$2,187.71. This amount was arrived at by (i) calculating the net amount paid for the bonds and subtracting the value of the bonds on or about January 12, 2004, (ii) dividing this amount in half (50% Claimant's responsibility) and (iii) subtracting the bond interest paid by the bonds to Claimant ($\$14,275.42 - \$4,650 = \$9,625.42$; $\$9,625.42 / 2 = \$4,812.71$; $\$4,812.71 - \$2,625 = \$2,187.71$).

With respect to Claimant's allegations that Capital Securities failed to supervise Mr. Aquino, there are facts that indicate some supervisory weaknesses. For example, the initial trades occurred on August 15, 2001 and Mr. Shiel did not execute Capital Securities' new account application until the next day, August 16, 2001. The new account application, which is attached as Exhibit A to the Statement of Answer of Capital Securities and incorporated by reference in the Statement of Answer of Cesar Aquino, is not signed by Aquino and is not signed or dated by an Authorized Supervisor of Capital Securities. The "Initial transaction" box is not filled in, so the trades apparently were not reviewed. Also, it is unusual for taxable bonds and tax free bonds to be purchased in the

same account, and there is no explanation for this in the record. The new account application is not designed for a Trust. It requested information about Mr. Shiel, but failed to ask for information about the trust itself, which was Respondents' customer, i.e., its assets, liabilities, annual income, investment objectives and restrictions, risk exposure, effective tax status, or beneficiaries. There is no indication that a copy of the trust was requested by or provided to Capital Securities.

However, Claimant's allegation that Capital Securities failed to supervise Mr. Aquino is not established as Claimant fails to establish a causal link between these facts and its losses. Nonetheless, Capital Securities is jointly and severally liable to Claimant pursuant to the doctrine of Respondeat Superior.

AWARD

1. Respondents Cesar Aquino and Capital Securities of America, Inc. are jointly and severally liable to and shall pay Claimant the sum of \$19,534.90 as compensatory damages related to the unsuitable recommendations discussed herein.
2. Respondents Cesar Aquino and Capital Securities of America, Inc. are jointly and severally liable to and shall pay Claimant interest at the rate of 8% on \$19,534.90 from the date of this award until the date compensatory damages are paid in full to Claimant.
3. Respondents are jointly and severally liable for all forum fees, and each party shall bear their own attorney fees and other costs.
4. All other relief not expressly granted is denied.

Richard Brady