

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 05-01580

Marguerite A. Kern

Names of the Respondents

Hearing Site: Richmond, Virginia

National Planning Corp.

Dale E. Wright

Michael J. Thaler

John Edward Girouard

Capital Investment Advisors

Equity Concepts, LLC

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Nature of the Dispute: Customer vs. Member, Non-Members, and Associated Persons.

REPRESENTATION OF PARTIES

Claimant, Marguerite A. Kern, hereinafter collectively referred to as "Claimant", was represented by Henry Willett, Esq., Christian Burton, LLP, Richmond, Virginia.

Respondents, National Planning Corp. "National", Dale E. Wright ("Wright"), Michael J. Thaler ("Thaler"), and Equity Concepts, LLC ("Equity"), were represented by Gerald Kowlaski, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, PC, Philadelphia, Pennsylvania.

Respondents, John Edward Girouard ("Girouard"), and Capital Investment Advisors ("Capital"), were represented by Joseph Ingrisano, Esq., Kutak Rock, LLP, Washington, D.C.

CASE INFORMATION

Statement of Claim filed on March 25, 2005.

Amended Statement of Claim filed on May 6, 2005.

Claimant filed a signed, undated Uniform Submission Agreement.

Statement of Answer and Motion to Dismiss filed by Respondents Wright, Thaler, Girouard, National and Capital on July 5, 2006.

A representative of Respondent National executed the Uniform Submission Agreement on April 5, 2005.

Respondent Wright signed the Uniform Submission Agreement on June 15, 2005.

Respondent Girouard signed the Uniform Submission Agreement on July 15, 2005.

A representative of Respondent Capital executed the Uniform Submission Agreement on July 15, 2005.

Respondent Thaler signed the Uniform Submission Agreement on December 20, 2005. Respondent Equity declined to participate in this arbitration.

### CASE SUMMARY

Claimant asserted the following causes of action, among others: unsuitability, churning, breach of fiduciary duty, unauthorized trading, breach of contract, failure to supervise/vicarious liability, fraudulent inducement, and violation of Investment Advisers Act of 1940. The causes of action relate to variable annuities, mutual funds, and various other unspecified securities.

Unless specifically admitted in their Answer, Respondents Wright, Thaler, Girouard, National and Capital denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, laches, unclean hands, estoppel, contributory negligence, waiver, assumption of risk, ratification, Respondents maintained adequate supervisory systems, setoff, and statute of limitations.

### RELIEF REQUESTED

Claimant in her Statement of Claim requested:

Compensatory Damages	\$ 600,000.00
Punitive Damages	\$1,500,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents Wright, Thaler, Girouard, National and Capital in their Statement of Answer requested that the Statement of Claim be dismissed, that this matter be expunged from the individual Respondents NASD Central Registration Depository ("CRD") records, and that the costs of this arbitration be assessed against Claimant.

### OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing on the merits the parties settled this matter. Respondents Thaler and Girouard requested that this matter be expunged from their CRD record. A hearing on the expungement issue was held on August 10, 2006.

### 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. All claims against Respondents are dismissed in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Thaler's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Thaler must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;

3. The Panel declines to recommend the expungement Respondent Girouard's CRD records;
4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
5. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

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

Initial claim filing fee	= \$ 500.00
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#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent National is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>

Total Member Fees = \$ 8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 2-4, 2006 adjournment requested by Respondents Girouard  
and Capital = \$ 1,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 with a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: April 10, 2006 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 3,600.00  
Pre-hearing conferences: September 16, 2005 1 session  
April 17, 2006  
August 10, 2006

One (1) Pre-hearing sessions with Panel @ \$1,200 = waived  
Pre-hearing conference: August 8, 2006 1 session  

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Total Forum Fees = \$ 4,050.00

1. The Panel has assessed \$1,425.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,200.00 of the forum fees jointly and severally to Respondents Thaler and Girouard.
3. The Panel has assessed \$1,425.00 of the forum fees jointly and severally to Respondents National, Wright, Thaler, Girouard, and Capital.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 1,425.00</u>
Total Fees	= \$ 1,925.00
<u>Less payments</u>	<u>= \$ 1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 225.00

2. Respondent National is assessed and shall pay the following fees:

<u>Member Fees</u>	<u>= \$ 8,550.00</u>
Total Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>

Balance Due NASD Dispute Resolution = \$ 8,550.00

3. Respondents National, Wright, Thaler, Girouard, and Capital are jointly and severally assessed and shall pay the following fees:

<u>Forum Fees</u>	= \$ 1,425.00
<u>Total Fees</u>	= \$ 1,425.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,425.00

4. Respondents Thaler and Girouard are jointly and severally assessed and shall pay the following fees:

<u>Forum Fees</u>	= \$ 1,200.00
<u>Total Fees</u>	= \$ 1,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

5. Respondents Girouard and Capital are jointly and severally assessed and shall pay the following fees:

<u>Adjournment Fees</u>	= \$ 1,200.00
<u>Total Fees</u>	= \$ 1,200.00
<u>Less payments</u>	= \$ 1,200.00
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

Stuart H. Dunn, Esq.	-	Public Arbitrator, Presiding Chairperson
Jane C. Carney, CPA	-	Public Arbitrator, Panelist
John E. Baynum, Sr.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Stuart H. Dunn  
Stuart H. Dunn, Esq.  
Public Arbitrator, Presiding Chairperson

9-25-06  
Signature Date

Jane C. Carney, CPA  
Public Arbitrator, Panelist

Signature Date

John E. Baynum, Sr.  
Non-Public Arbitrator, Panelist

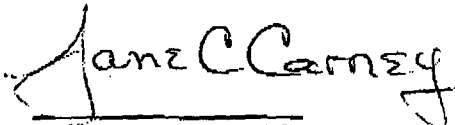
Signature Date

October 2, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Stuart H. Dunn, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Jane C. Carney, CPA  
Public Arbitrator, Panelist

9-26-2006  
Signature Date

John E. Baynum, Sr.  
Non-Public Arbitrator, Panelist

Signature Date

October 2, 2006  
Date of Service (For NASD Dispute Resolution office use only)

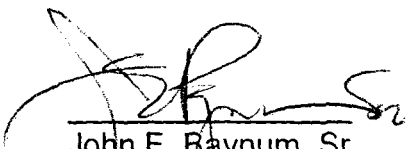
Concurring Arbitrators' Signatures

Stuart H. Dunn, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Jane C. Carney, CPA  
Public Arbitrator, Panelist

Signature Date

  
John E. Baynum, Sr.  
Non-Public Arbitrator, Panelist

29 Sep 06  
Signature Date

October 2 2006  
Date of Service (For NASD Dispute Resolution office use only)