
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Bernard Gordon, Trustee, acting on behalf of the
Bernard Gordon Trust

Case Number: 06-00865

Name of the Respondent

Capital Growth Financial, LLC

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Bernard Gordon, Trustee, acting on behalf of the Bernard Gordon Trust, hereinafter referred to as "Claimant": Brian D. Buckstein, Esq., Dobin & Jenks, LLP, Jupiter, Florida.

For Capital Growth Financial, LLC, hereinafter referred to as "Respondent": Charles E. Scarlett, Esq., Scarlett & Gucciardo, P.A., Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: February 21, 2006.

Claimant signed the Uniform Submission Agreement: February 14, 2006.

Statement of Answer filed by Respondent on or about: May 18, 2006.

Respondent signed the Uniform Submission Agreement: May 18, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) negligence; 3) fraud; and, 4) violation of the Florida Securities and Investor Protection Act (Florida Statute Section 517.301). The causes of action relate to the purchase of Collins & Aikman bonds in Claimant's account.

Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested the following: 1) compensatory damages in the amount of \$183,005.56 or, in the

alternative, rescission of the sale of the Collins & Aikman bonds; 2) an unspecified amount of punitive damages; 3) interest from the date of the bond sale; 4) costs, including filing and hearing fees; 5) reasonable attorneys' fees, pursuant to Chapter 517; and, 6) such other relief as deemed just by the Panel.

Respondent requested that the Statement of Claim be dismissed in its entirety. Additionally, during the evidentiary hearing, Respondent further requested reimbursement of attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

At the conclusion of Claimant's case-in-chief, Respondent moved to dismiss. After hearing oral argument from the parties, the Panel reserved ruling on the motion until the conclusion of the case. Thereafter, the Panel determined to deny Respondent's motion.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims for breach of fiduciary duty, negligence, fraud and violation of the Florida Securities and Investor Protection Act (Florida Statute Section 517.301) are denied in their entirety.

Respondent is liable for and shall pay to Claimant the sum of \$150.00, representing reimbursement of one-half of the non-refundable initial claim filing fee paid by Claimant to NASD Dispute Resolution.

As prevailing party, Respondent could have been entitled to fees and costs pursuant to Florida Statute Section 517.211(6); however, the Panel finds the award of such fees and costs, after reviewing and hearing the evidence in this arbitration, would be unjust.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and the parties' respective requests for attorneys' fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 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 person at the time of the events giving rise to the dispute. Accordingly, Respondent is a member firm and a party and the following fees are assessed:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: July 26, 2006 1 session	

Two (2) Hearing sessions with the Panel @ \$1,125.00/session	= \$2,250.00
Hearing Date: February 7, 2007 2 sessions	

Total Forum Fees	= \$3,375.00
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The Panel has assessed \$1,687.50 of the forum fees to Claimant.
The Panel has assessed \$1,687.50 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

Respondent is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$1,687.50
Total Fees	= \$6,887.50
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$1,687.50

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

ARBITRATION PANEL

Gary W. Pollack, Esq.	-	Public Arbitrator, Presiding Chairperson
Judy Avey	-	Public Arbitrator
Steven A. Hurst, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Gary W. Pollack, Esq.
Public Arbitrator, Presiding Chairperson

February 9, 2007
Signature Date

/s/
Judy Avey
Public Arbitrator

February 12, 2007
Signature Date

/s/
Steven A. Hurst, CFP
Non-Public Arbitrator

February 12, 2007
Signature Date

February 12, 2007
Date of Service (For NASD Dispute Resolution office use only)

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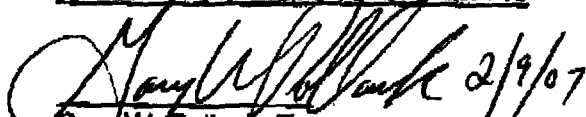
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Gary W. Pollack, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

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Judy Avey
Public Arbitrator

2-12-07
Signature Date

Steven A. Hurst, CFP
Non-Public Arbitrator

Signature Date

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

Judy Avey

Public Arbitrator

Signature Date

Steven A. Hurst
Steven A. Hurst, CFP

Steven A. Hurst, CFP

Non-Public Arbitrator

2-12-2007

Signature Date

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