

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Connie S. Vanlerberg

vs.

Case Number: 06-03244
Hearing Site: Kansas City, Missouri

Name of Respondent

Gold Capital Management, Inc.

NATURE OF THE DISPUTE

Customer vs. Terminated Member

REPRESENTATION OF PARTIES

Connie S. Vanlerberg ("Claimant") was represented by Jeffrey S. Kruske, Esq., The Law Offices of Jeffrey S. Kruske, PA, Overland Park, Kansas.

Gold Capital Management, Inc. ("Respondent") was represented by Robert M. Thompson, Esq., Bryan Cave, LLP, Kansas City, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about July 10, 2006. The Submission Agreement of Claimant, Connie S. Vanlerberg, was signed on or about June 7, 2006.

The Statement of Answer and Motion to Dismiss was filed by Respondent, Gold Capital Management, Inc., on or about September 15, 2006. The Submission Agreement of Respondent, Gold Capital Management, Inc., was signed on or about September 12, 2006.

Claimant filed a Response in Opposition to Respondent's Motion to Dismiss on or about December 22, 2006. Respondent filed a Reply in Support of its Motion to Dismiss on or about January 5, 2007.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; failure to supervise; breach of fiduciary duty; misrepresentations; omission of facts; and suitability. Claimant alleged that Respondent made an unsuitable recommendation that she purchase a variable

annuity, Best of America "Exclusive Annuity II," with her funds from her IRA. Claimant alleged that the annuity was comprised of various mutual funds representing a 100% concentration in equities and as a result the annuity gave her no diversification in her portfolio and caused losses in her account. Claimant also alleged that Respondent did not explain the various charges and tax penalties to Claimant prior to the recommendation of purchase.

Unless specifically admitted in its Answer, Respondent, Gold Capital Management, Inc., denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a cause of action against Respondent; Claimant failed to plead fraud with particularity; the damages alleged suffered by Claimant had no causal relationship to any act committed by Respondent or legally attributable to Respondent; Claimant's claims are barred by the doctrines of waiver, laches, and/or consent; Claimant's claims are barred by the applicable statutes of limitation and/or the statute of repose; Claimant's damages, if any, alleged to have been sustained by Claimant was caused, in whole or in part, by Claimant; the transactions complained of in the Statement of Claim were duly authorized by Claimant; and the decline in value on Claimant's account represents, in part, the decline in the market generally, with respect to which Claimant assumed all of the risk, and which does not represent a loss.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 60,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

On February 5, 2007, the Panel heard oral arguments regarding Respondent's Motion to Dismiss. After deliberations, the Panel granted the Motion based on the failure of Claimant to bring this claim within the six year time period pursuant to Rule 10304 of NASD Code of Arbitration Procedures.

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.

AWARD

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

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee	= \$ 225.00
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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 firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is Gold Capital Management, Inc.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

Forum Fees and Assessments

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that last four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$ 750.00	= \$ 1,500.00
Pre-hearing conferences: November 20, 2006	1 session
February 5, 2007	1 session
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Total Forum Fees	= \$ 1,500.00

The Panel has assessed \$ 1,500.00 of the forum fees to Connie S. Vanlerberg.

FEE SUMMARY

Claimant, Connie S. Vanlerberg, is liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,500.00
Total Fees	= \$ 1,725.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Respondent, Gold Capital Management, Inc., is liable for:

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 2,950.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

ARBITRATION PANEL

Robert G. Scott, Esq. - Public Arbitrator, Presiding Chair
Sandra E. Price, Esq. - Public Arbitrator
John W. Jones, CFP - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Robert G. Scott, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Sandra E. Price, Esq.
Public Arbitrator

Signature Date

John W. Jones, CFP
Non-Public Arbitrator


Signature Date

2/2/07
Date of Service (For NASD office use only)

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Robert G. Scott, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Sandra E. Price, Esq.
Public Arbitrator

02-8-07
Signature Date

John W. Jones, CFP
Non-Public Arbitrator

Signature Date

2/8/07
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Public Arbitrator, Presiding Chair

Signature Date

Sandra E. Price, Esq.
Public Arbitrator

Signature Date

John W. Jones, CFP
Non-Public Arbitrator

2/6/07

Signature Date

2/8/07

Date of Service (For NASD office use only)