

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
Suite 1680  
Three First National Plaza  
Chicago, IL 60602  
(312) 899-4440

In the Matter of the Arbitration Between

Name of Claimant(s)

Stuart C. and Sharon S. Spigel

89-01546

Name of Respondent(s)

Gary Clifford Smith

CASE SUMMARY

In a claim filed with the NASD on or about May 26, 1989, Claimants Stuart and Sharon Spigel ("the Spigels") alleged that Respondent Gary C. Smith ("Smith") committed the following acts:

1. Criminal fraud;
2. Forging of signatures and causing same to be falsely witnessed, notarized or guaranteed in furtherance of the interest of Mr. Smith;
3. Misrepresentation of investments;
4. Mismanagement of funds entrusted to Mr. Smith;
5. Conflicts of interest;
6. Poor communication and lack of substantive recordkeeping;
7. Failure to comply with federal regulation for pension and profit sharing plans;
8. Inattention to correct recording of Tax I.D. numbers and social security numbers and other details consistent with the fiduciary responsibility of a financial planner;
9. Failure to disclose fees and commissions; and
10. Ignoring fiduciary responsibility to recommend and direct retirement funds into conservative, low risk investment vehicles.

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These allegations were made by the Spigels in connection with their purchase of various real estate limited partnership investments and mutual funds.

Smith's answer to the claim, which was filed with the NASD on or about September 29, 1989, denied the allegation's of the claim. Smith alleged that the investments made for the Spigels were clearly suitable for them. Smith alleged that the Spigels only invested after a thorough review of the investment vehicles and that the Spigels authorized each investment. Additionally, Smith alleged that the commissions he received were reasonable and that he did not make any bookkeeping or clerical errors.

Smith filed an answer to the Spigels' amended claim wherein he denied that he mismanaged, intentionally or otherwise, any of the Spigels accounts.

**RELIEF REQUESTED**

The Spigels requested damages of \$250,000.00 for losses incurred to date, future losses and damages. Smith requested dismissal of the claims in their entirety.

**AWARD**

On Monday and Tuesday, June 11 and 12, 1990 in Nashville, Tennessee during a hearing lasting five sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on May 22, 1989 by Claimants Stuart and Sharon Spigel and on September 28, 1989 by Respondent Gary C. Smith.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Smith is liable for and shall pay to the Spigels, jointly, inclusive of interest, the sum of Seventy One Thousand Two Hundred Seventy Four Dollars and Twenty Two Cents (71,274.22);
2. The parties shall each bear their respective costs and expenses including any attorney's fees incurred in this matter; and

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3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$750.00 filing fee previously deposited with the NASD by the Claimants and Smith is assessed and shall pay to the NASD forum fees of \$3750.00.

By the Panel

Dated: August 23, 1990

/S/Stanley Snodgrass  
Presiding Chair

Dated: August 23, 1990

/S/Thomas Yount

Dated: August 23, 1990

/S/Milton Sitton