

N.A.S.D. AWARD.

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Harold, Daniel and Prisci Eidet

89-03195

Name of Respondent(s)

Allied Capital Group, Inc.
Bill Hine
RAF Financial Corporation
RFC Clearing and Paying Agent
Robert Fitzner
Richard Spath
Edward Fay
Peter Mercaldi

REPRESENTATION OF PARTIES

Claimant Daniel Eidet, appeared on his own behalf and on the behalf of Harold and Priscilla Eidet.

Respondent Peter Mercaldi appeared on his own behalf, and as the corporate representative of Allied Capital Group.

Respondent Richard Spath appeared on his own behalf by telephone.

Respondents Fred Borries, William Hine and Edward Fay failed to appear.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about November 15, 1989, Claimants alleged violation of Section 10(b) of the 1934 Securities Exchange Act, Common Law Fraud, RICO violation, and breach of fiduciary duty.

In April of 1988, Claimant Daniel Eidet opened an account for himself and his father, Harold Eidet, with Respondent William Hine who was a broker with Allied Capital Group. Respondent Hine offered Star Publication Stock, a penny stock based on misrepresentations about Viability and marketing rights of the company. Until January 31, 1989, Respondent Allied Capital Group offered for sale and sold to Claimants Star warrants and common stock.

PROCEDURAL MATTERS

On September 10, 1991 in Kansas City, MO during a hearing lasting total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 24, 1989 by Claimants Harold, Daniel and Priscilla Presley on February 2, 1990 by Peter Mercaldi on behalf of Respondent Allied Capital Group and his own behalf, on January 27, 1990 by Respondent Richard Spath, and on January 10, 1990 by Respondent Edward Fay.

Respondent William Hine did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure is bound by the determination of the arbitration panel on all issues submitted.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

AWARD

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. Respondent William Hine is liable for and shall pay to Claimants Daniel and Priscilla Eidet the sum of \$30,000;
2. All claims against the Respondents Fred Borries, Richard Spath Edward fay, Peter Mercaldi, and Allied Capital Group are hereby dismissed and denied in their entirety;
3. The parties shall bear their own costs and fees associated with this arbitration, except for those specifically enumerated herein;
4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$200 filing fee and the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants.
5. Respondent William Hine is liable to and shall pay to the NASD the sum of \$950 for the additional hearing session fees.

OTHER ISSUES

Respondent, Richard Spath, requested, to be permitted to testify by telephone. After hearing the request, and deliberation, the panel granted the request.

Respondent, Peter Mercaldi, made motion to dismiss himself personally from this matter. The panel decided the issue and it was determined that the proceeding would continue, and the decision be made after Respondents' testimony.

Respondents, Fred A. Borries, Bill Hine, and Edward Fay, were not present even though the NASD has made numerous attempts to sure them. The following are set out as device attempts by the NASD:

1. A Certified mailing sent to Bill Hine and Edward Fay on October 1, 1990. Both Return Receipts were declined by the NASD signed by Edward Fay and the Agent of Bill Hine.
2. A Certified mailing sent to Fred A. Borries, Bill Hine, and Edward Fay on November 29, 1990. The NASD received signed return receipts from Fred Borries, and the Agent of Bill Hine.
3. A Letter sent by Regular mail on January 2, 1991 to Edward Fay, and returned to the NASD by the postal service.
4. A letter sent by regular mail on May 2, 1991 to Edward Fay, and returned to the NASD by the postal service.
5. Federal Express mailing, sent to Edward Fay, Bill Hine and Fred Borries sent on September 5, 1991 by the NASD. The mailing to Edward Fay was returned to the NASD on September 6, 1991.
6. A Certified mailing by the NASD sent August 14, 1991 to Edward Fay, Bill Hine, and Fred A. Borries.

After reviewing the aforementioned service attempts by the NASD, the panel allowed the proceeding to continue without Respondents, Hine, Fay, and Borries, being present under Section 29 of the NASD Code of Arbitration Procedure.

Respondent, Richard Spath, made an objection to Claimants presentation of Exhibits at the hearing because Claimant failed to comply with Section 32(c) of the Code of Arbitration. The panel allowed Claimant's exhibits in with Respondent's Objections and would weigh their relevance accordingly.

Arbitrator James S. Allen failed to attend the hearing. The parties did not object to proceeding with 2 arbitrators present at the hearing. The panel decided to proceed.

In reliance on the representations, Claimants purchased \$52,000. of Star Common Stock and warrants. Shares in Data Display were also offered to Claimants by Respondent William Hine without Respondent Hine disclosing the insolvency of the company, or the speculative nature of the investment. Claimant Daniel Eidet purchased \$11,715. of this common stock, and Claimant Harold Eidet purchased \$23,430. In August of 1988, Respondent Richard Spath took over Claimants' account.

In October of 1988, Respondent Spath solicited Claimants to purchase CIP Holdings, a penny stock while failing to inform Claimants that the market for this stock was made solely by Respondent Allied Capital Group, or that CIP Holdings was insolvent. Claimant Daniel Eidet invested \$5,720. The stock it is now worthless.

After this purchase, Claimant Dan Eidet contracted Respondent spath two times in order to withdraw money from the account. The second time Claimant was informed that there was nothing in the account because the stock had collapsed in value.

In a Statement of Answer filed with the NASD on or about January 17, 1990. Respondent Edward Fay denied any involvement in the aforementioned transaction as either a broker or branch manager at the time of Claimants' involvement with Respondents William Hine and Richard Spath.

In a Statement of Answer filed with the NASD on or about February 4, 1990, Respondent Richard Spath admitted taking over Claimants account, in August of 1988, and further admitted to Making the CIP Holdings trade on behalf of Claimants. Respondent Spath denied any contact with Claimants after January of 1989 when Respondent Edward Fay took over Claimants account.

In a joint Statement of Answer filed with the NASD on or about February 26, 1991, by Respondents Peter Mercaldi and Allied Capital Group denied that they were involved in and/or had knowledge of any fraudulent representations, or omissions, and also denied any failure to perform proper due diligence in regards to the Star Publications, Respondent Peter Mercaldi also denied using the president of Respondent Allied Capital Group at all times relevant hereto. Respondents denied each and every other allegation in Claimants Statement of Claim.

RELIEF REQUESTED

Claimant requested that the Panel award them the sum of \$82,851 against all the Respondents in this case.

Claimants requested an award of interest and attorney's fees. They further requested an award of punitive damages and treble damages against all of the Respondents.

Respondents Allied Capital Group and Peter Mercaldi requested that this action be dismissed as to them, and that they recover and costs of this action, including attorney's fees.

Dated:

Oct. 19, 1991

Date Served by UAS.

John H. Lungren, Esq.
Presiding Chair

Arthur F. Dawsberry
Arthur F. Dawsberry, Esq.
Public Arbitrator

A. F. Dawsberry

99-5145

Dated:

October 24, 1991



John H. Lungren, Esq.
Presiding Chair

Arthur F. Dewsberry, Esq.
Public Arbitrator

Date Selection made

11-21-91