

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Roger A. Arkebauer,  
Claimant

89-03420

Graystone Nash, Inc.,  
Thomas Duane Binning,  
Patrick Comerford, and  
Thomas Vincent Ackerly,  
Respondents

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CASE SUMMARY

In a claim filed with the NASD on or about December 6, 1989, Roger A. Arkebauer ("Claimant") alleged that Thomas Binning ("Binning") made false and misleading statements of material facts and failed to state material facts in connection with the purchase of Bavarian Technologies, Inc. and Capital Investment Development Corporation; that Patrick Comerford ("Comerford") made numerous false and misleading statements to him regarding the investment in Capital Investment Development Corporation; and that the securities were not registered pursuant to Section 5 of the Securities Act of 1933 and Section 5 of the Illinois Securities Law.

In their joint answer filed with the NASD on or about February 5, 1990, Respondents Graystone Nash, Inc. and Thomas Ackerly denied any knowledge of the conversations between the claimant and Binning and/or Comerford and asserted the following affirmative defenses: that the securities were exempt from the registration provisions of the Illinois Securities Law; failure to mitigate; claimant made a business decision that did not turn out as expected; the brokerage firm does not guarantee a profit to a customer; and the NASD Code of Arbitration does not provide for punitive damages.

In his answer filed with the NASD on or about February 5, 1990, Binning denies making any misleading or false statements to claimant and states that he disseminated information to his customers which was provided to him by Graystone Nash, Inc.

In his answer filed with the NASD on or about February 20, 1990, Comerford denied making any false or misleading statements to claimant and further denied ever receiving an order to sell any stock.

### RELIEF REQUESTED

Claimant requested an award in the amount of \$56,875.00 plus interest from the date of investment, unspecified punitive damages, attorney's fees and costs.

Respondents Graystone Nash, Inc., Thomas Duane Binning, Patrick Comerford, and Thomas Vincent Ackerly requested that the statement of claim be dismissed. Respondents Graystone Nash, Inc. and Thomas Ackerly also requested attorney's fees.

### OTHER ISSUES

Counsel for Graystone Nash, Inc. and Thomas Ackerly presented their defense and appeared on behalf of his client's telephonically. There was no objection by claimant or any of the remaining respondents.

The parties agreed that the arbitrators could execute a handwritten award or sign the award in counterpart and forward a typed, conformed award to the parties with the original signatures available upon request.

### AWARD

On Friday, October 5, 1990 a prehearing conference lasting one session was held with an arbitrator presiding. On Wednesday, October 10, 1990 in Chicago, Illinois during a hearing lasting a total of two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 2, 1989 by Claimant Roger A. Arkebauer on February 1, 1990 by Thomas Ackerly on behalf of Respondent Graystone Nash, Inc. and individually, on January 31, 1990 by Respondent Thomas Binning, and on February 19, 1990 by Respondent Patrick Comerford.

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 Graystone Nash, Inc. shall be and hereby is liable for and shall pay to the Claimant the sum of Six Thousand Two Hundred Fifty Dollars (\$6,250.00);
2. All claims asserted against Respondents Thomas Duane Binning and Patrick Comerford shall be and hereby are dismissed in their entirety;
3. Each party shall bear its own costs and expenses including attorneys fees incurred in this matter not specifically enumerated herein; and
4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the

National Association of Securities Dealers, Inc. shall retain the filing fee in the amount of \$500.00 previously deposited with the NASD by the Claimant Roger Arkebauer. Respondent Graystone Nash, Inc. shall pay to the NASD the sum of \$1,000.00 as forum fees.

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Saul A. Epton  
Saul A. Epton, Esq.

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National Association of Securities Dealers, Inc. shall retain the filing fee in the amount of \$500.00 previously deposited with the NASD by the Claimant Roger Arkebauer. Respondent Graystone Nash, Inc. shall pay to the NASD the sum of \$1,000.00 as forum fees.

October 19, 1990

Robert C Banges  
Robert C. Banges, Esq.


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Saul A. Epton, Esq.

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Paul E. Murin

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Robert C. Bonges, Esq.

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