

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Jean Grose

Claimant

vs.

90-01002

William Collings, American Capital Equities,
Inc., Robert Hilliard, SFG Brokerage Co.
Respondents

REPRESENTATION OF PARTIES

Claimant Jean Grose was represented by John M. Franck II, Esq. and James N. Williams, Esq. of Middleton and Reutlinger, Louisville, Kentucky.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about April 3, 1990, Claimant Jean Grose ("Grose") alleged that Respondents William Collings ("Collings") and American Capital Equities ("American") engaged in deceptive and fraudulent practices and participated in a scheme to defraud Claimant by recommending to and selling to Claimant inappropriate investments, generating excessive commissions, churning Claimant's accounts, violating the New York Stock Exchange "Know Your Customer" Rule, violating the NASD Suitability Rule, and violating certain provisions of the NASD manual Rules of Fair Practice. Grose alleged that she received a \$95,000 Divorce Settlement in 1984 in which \$90,000 of that settlement she invested in \$65,000 worth of certificates of deposit at Citizens Fidelity Bank & Trust and \$25,000 in a Franklin U.S. Government Securities Fund.

In late 1986 or early 1987, Grose was introduced to stock broker, Respondent William Collings who was employed by Respondent American Capital and SF & G Brokerage Co.; Collings began to invest for Grose.

Grose alleged that Collings took the \$90,000 she had already invested and, with Grose's permission, placed said funds in new mutual fund accounts (Franklin U.S. Government, MSF/Life and Franklin Dynatech). Grose alleged Collings transacted her

\$90,000, assuring Grose that it was in her best interest, he was on to a sure thing, and that he had inside information.

Grose alleged that by the end of 1988, her entire \$90,000 had dwindled to less than \$5000. The type of stock involved in the transactions were common stock, options, and various mutual funds.

Respondent Collings did not submit an answer to the Statement of Claim.

Respondent American Capital Equities, Inc., in a Statement of Answer filed with the NASD on or about June 11, 1990 denied the allegations of the claim. American alleged that they should not be responsible for purchases in Grose's account while such account was with SF & G Brokerage.

RELIEF REQUESTED

Claimant Grose requested actual damages in the amount of \$100,000, punitive damages in the amount of \$100,000, interest on all sums, costs, and attorney's fees.

Respondent American Capital requested that Grose's claims be dismissed and that they be awarded costs incurred including reasonable attorney's fees.

OTHER ISSUES

At the hearing held on May 9, 1991, claimant settled with Respondent Robert Hilliard. Respondent Collings was not served notice of the hearing for May 9, accordingly an adjournment was granted until July 24, 1991 to effect service on Collings. A default judgment was entered against Respondent American Capital for not appearing at the May 9 hearing.

At the hearing held on July 24, 1991, Claimant voluntarily dismissed Respondent SFG Brokerage Co. Also, claimant presented proof of service of the notice of hearing on Collings, nevertheless, Collings did not appear.

PROCEDURAL MATTERS

On May 9, 1991 and July 24, 1991 in Indianapolis, Indiana during a hearing lasting a total of (2) two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on April 3, 1990 by Claimant Jean Grose and on June 7, 1990 by Robert Hilliard on behalf of Respondent American Capital Equities, Inc.

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. Respondents American Capital Equities, Inc. and William Collings, jointly and severally, shall be and hereby are liable for and shall pay to Claimant Jean Grose actual damages in the amount of Thirty Nine Thousand One Hundred Sixteen Dollars and No Cents (\$39,116);
2. Respondent William Collings, individually, shall be and hereby is liable for and shall pay to Claimant Jean Grose an additional amount of actual damages in the amount of Sixteen Thousand Two Hundred Sixteen Dollars and No Cents (\$16,216);
3. Respondents American Capital Equities, Inc. and William Collings, jointly and severally, shall be and hereby are liable for and shall pay to Claimant Jean Grose punitive damages in the amount of Seventy Eight Thousand Two Hundred Thirty Two Dollars and No Cents (\$78,232);
4. Respondent William Collings, individually, shall be and hereby is liable for and shall pay to Claimant Jean Grose an additional amount of punitive damages in the amount of Sixty Four Thousand Eight Hundred Sixty Four Dollars and No Cents (\$64,864);
5. Respondents American Capital Equities, Inc. and William Collings, jointly and severally, shall be and hereby are liable for and shall pay to Claimant Jean Grose attorney's fees in the amount of Twelve Thousand Dollars and No Cents (\$12,000);
6. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant. Respondents Collings and American Capital shall

reimburse to Claimant the hearing session deposit previously deposited with the NASD in the amount of \$500. Respondents shall be and hereby are liable, jointly and severally, and shall pay to the N.A.S.D. additional forum fees in the amount of \$1650.

Dated:

Stephen M. Coons, Esq.
Presiding Chair
Public Arbitrator

Bruce M. Fingerhut
Public Arbitrator

October 24, 1991

Robert G. White
Robert G. White
Industry Arbitrator

Report of Arbitrators

Jean Grose

v.

William Collings, American Capital Equities, Inc.,
Robert Hilliard, SFG Brokerage Co.

90-01002

The panel awarded attorney's fees pursuant to Indiana Securities Act Section 23-2-1-et seq.

The following is the authority to support the panel's award of punitive damages:

1. In the Matter of the Arbitration between William H. Pyle v. Securities U.S.A., Inc., 758 F. Supp. 638 (Colo. 1991);

2. Willoughby Roofing & Supply Co. v. Kajima International, Inc., 598 F. Supp. 353 (N.D. Ala. 1984), aff'd on opinion below 776 F.2d 269 (11th Cir. 1985); and

3. Bonar v. Dean Witter Reynolds, Inc., 835 F.2d 1378 (11th Cir. 1988); and

4. Raytheon Company v. Automated Business Systems, 882 F.2d 6 (1st Cir. 1989).

reimburse to Claimant the hearing session deposit previously deposited with the NASD in the amount of \$500. Respondents shall be and hereby are liable, jointly and severally, and shall pay to the N.A.S.D. additional forum fees in the amount of \$1650.

Dated:

Stephen M. Coons, Esq.
Presiding Chair
Public Arbitrator

24 Oct 91

Bruce M. Fingerhut
Bruce M. Fingerhut
Public Arbitrator

Robert G. White
Industry Arbitrator

reimburse to Claimant the hearing session deposit previously deposited with the NASD in the amount of \$500. Respondents shall be and hereby are liable, jointly and severally, and shall pay to the N.A.S.D. additional forum fees in the amount of \$1650.

Dated:

October 21, 1991



Stephen M. Coons, Esq.
Presiding Chair
Public Arbitrator

Bruce M. Fingerhut
Public Arbitrator

Robert G. White
Industry Arbitrator