

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between	)	
<u>Name of Claimant(s)</u>	)	
Angelo A. Fanelly	)	
	)	Case No. 90-03641
<u>Name of Respondent(s)</u>	)	
Barry A. Hofer	)	
Advantage Capital Corp.	)	
Business Benefits Of Akron, Inc.	)	

REPRESENTATION

For Claimant, Angelo A. Fanelly ("Fanelly"): Dixon Thomas, Esq.

For Respondents, Business Benefits of Akron, Inc. ("BBA") and Barry A. Hofer ("Hofer"): Michael A. Malyuk, Esq. of Roderick, Myers & Linton.

For Respondent, Advantage Capital Corp. ("Advantage"): Lea Smith Zeitman, Esq. of Advantage.

CASE INFORMATION

Statement of Claim filed: December 28, 1990. Claimant's Submission Agreement signed: December 18, 1990.

Respondents' Statements of Answer filed: March 4, 1991. Respondents' Submission Agreements signed by Hofer, individually and on behalf of BBA on March 27, 1991, and by Brian Presley on behalf of Advantage on March 14, 1991.

HEARING INFORMATION

On January 27, 1992, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondents, through Hofer, made misrepresentations of and omitted to state material facts; recommended and sold to Claimant an unsuitable investment in a "junk bond" mutual fund; and, failed to advise Claimant of the nature and risks involved. Claimant is a retired attorney who alleged that he relied to his detriment on the representations of Respondents and would not have made the investments in his various accounts if he had known the true nature of the investments.

Claimant withdrew his claims against Advantage prior to the hearing in this matter

Respondents, Hofer and BBA, denied all allegations of wrongdoing and alleged that Claimant did not invest in the fund upon the advice of Respondents; that Claimant chose the fund and was directly in touch with the fund managers; that Claimant was advised of all risks and received prospectuses of the fund; that the prices paid and losses are misstated; that Claimant sold shares due to financial need, fails to account for all income and such sales created losses to Claimant; and, that Claimant has not sold the shares in count II and, therefore, cannot have losses therefrom.

Respondent, Advantage, did not appear at the hearing as a result of the prior withdrawal of claims against it.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$76,876.00 plus interest and costs.

Respondents, Hofer and BBA, requested dismissal.

#### OTHER ISSUES CONSIDERED & DECIDED

1. Claimant advised at the commencement of the hearing on January 27, 1992, that he had withdrawn his claim against Advantage prior to the hearing. Advantage was, therefore, removed as a party.

2. 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 originals remain on file with the NASD.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's request for costs is denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,000.00 (two sessions x \$500.00). Claimant is hereby assessed \$1,000.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof. The remaining \$500.00 shall be paid to the National Association of Securities Dealers, Inc.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/  
Craig Edward Stein, Esq.

Public

/s/  
Judy Avey

Public

/s/  
Terrence W. Grant

Industry

Date of Decision: February 6, 1992