

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Antoinette Yamarino
Joanne Schiff
Joseph Tusa
Wayne Brennessel
Kathy Brennessel
Georgette Alexander
Catherine Calcagno

91-00411

Name of Respondent(s)

Philip R. Incorvaia
Time Capital Securities Corp.

REPRESENTATION

For Claimant: Lloyd S. Clarendon, Esq., Sole Practitioner.

For Respondent, Philip R. Incorvaia: Richard M. Galb, Esq. of Galb & Galb.

For Respondent, TimeCapital Securities Corp.: Milton R. Gleit, Esq. of
McCarthy, Fingar, Donovan, Drazen & Smith.

CASE INFORMATION

Statement of Claim filed: February 7, 1991.

Submission Agreements of all Claimants signed on: March 8, 1991.

Statement of Answer of Respondent, TimeCapital Securities Corp. dated: April
26, 1991.

Submission Agreement and Corporate Acknowledgment of Respondent, TimeCapital
Securities Corp. signed on April 23, 1991.

Statement of Answer of Respondent, Philip R. Incorvaia dated: April 25, 1991

Submission Agreement of Respondent, Philip R. Incorvaia, signed April, 1991.

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HEARING INFORMATION

Pre-Hearing Conference: September 12, 1991.

Hearing Date/Sessions: October 8, 1991-Two (2) Sessions
November 13, 1991-Two (2) Sessions.
November 14, 1991-Two (2) Sessions.

Hearing Location: New York City, New York.

CASE SUMMARY

Claimants, seven family members (a grandmother, her daughter and five grand children), alleged that over a period of two and one-half years, Respondents put their life savings at risk by churning their accounts at TimeCapital Securities Corporation which were opened in late 1985. Claimants alleged that their intention was that the money in their accounts, Franklin New York Tax-Free Income Funds, was to be left alone to grow. Instead, Claimants stated, Respondent, Philip Incorvaia, their registered representative at TimeCapital, repeatedly shifted Claimants' money from one mutual fund or money market fund to another often causing or participating in the forgery of Claimants' signatures on many of the authorizations which were used to effect those transactions. Claimants further stated that Respondent, Incorvaia, was not registered to sell securities to Arizona residents but that nevertheless he sold securities to Claimant, Joseph Tusa, who at all relevant times was a resident of the state of Arizona. Claimants alleged that Respondents, by their actions violated various securities laws including certain NASD rules of Fair Practice and that Respondent, TimeCapital Securities Corp. failed to supervise its employee, Incorvaia.

Respondent, Philip R. Incorvaia stated that his unauthorized signatures were placed on the redemption papers solely for the economic benefit of the Claimants and that he did not control the accounts in question but that all transactions were done with Claimants' knowledge and consent. Incorvaia contended that Claimants allegations of churning are frivolous since, among other reasons, the total commissions earned by him from all of the accounts were \$7,500.00. Respondent, Incorvaia further contended that Claimants' claims are barred by the applicable statutes of limitation.

Respondent, TimeCapital Securities Corporation, denied all allegations of wrongdoing.

RELIEF REQUESTED

Claimants requested an award of threefold their actual damages plus reasonable attorneys fees (pursuant to RICO). Pursuant to this measure of damages Claimants submitted that they are entitled to total damages of \$123,390 adjusted by adding interest to the time of the award plus their attorneys' fees. Claimants also requested punitive damages in such amount as the panel deems appropriate be assessed against Respondents.

Respondent, Incorvaia requested an award in his favor plus attorneys' fees.
Respondent, TimeCapital Securities Corporation requested an award in its favor plus attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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, Philip R. Incorvaia and TimeCapital Securities Corp. are jointly and severally liable and shall pay to Claimants, Catherine Calcagno and Antoinette Yamarino, the sum of Seventeen Thousand Three Hundred Fifty Six Dollars and No Cents (\$17,356.00) including interest to November, 1991, plus additional interest at the rate of 9% per annum from the date of the Award to the date of payment of this Award;
2. Respondents, Philip R. Incorvaia and TimeCapital Securities Corp. are jointly and severally liable and shall pay to Claimants, Catherine Calcagno and Joanne Schiff, the sum of Eight Thousand Six Hundred Seventy Eight Dollars and No Cents (\$8,678.00) including interest to November, 1991, plus additional interest at the rate of 9% per annum from the date of the Award to the date of payment of this Award;
3. Respondents, Philip R. Incorvaia and TimeCapital Securities Corp. are jointly and severally liable and shall pay to Claimants, Catherine Calcagno and Joseph Tusa, the sum of Eight Thousand Six Hundred Seventy Eight Dollars And No Cents (\$8,678.00) including interest to November 1991, plus additional interest at the rate of 9% per annum from the date of the Award to the date of payment of this Award;
4. Respondents, Philip R. Incorvaia and TimeCapital Securities Corp. are jointly and severally liable and shall pay to Claimants, Catherine Calcagno and Wayne Brunnessel, the sum of Five Thousand Seven Hundred Eighty Six Dollars and No Cents (\$5,786.00) including interest to November, 1991, plus interest at the rate of 9% per annum from the date of the Award to the date of payment of this Award;
5. Respondents, Philip R. Incorvaia and TimeCapital Securities Corp. are jointly and severally liable and shall pay to Claimants, Catherine Calcagno and Kathy Brunnessel, the sum of Five Thousand Seven Hundred Eighty Six Dollars and No Cents (\$5,786.00) including interest to November, 1991, plus additional interest at the rate of 9% per annum from the date of the Award to the date of payment of this Award;

6. Respondents, Philip R. Incorvaia and TimeCapital Securities Corp. are jointly and severally liable and shall pay to Claimants, Catherine Calcagno and Georgette Alexander, the sum of Five Thousand Seven Hundred Eighty Six Dollars and No Cents (\$5,786.00) including interest to November, 1991, plus interest at the rate of 9% per annum from the date of the Award to the date of payment of this Award;

7. Claimants Claim for damages under RICO are denied;

8. Claimants Claim for punitive damages are denied;

9. All other Claims are denied;

10. The parties shall each bear their own costs including attorneys fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$200.00 non-refundable filing fee previously deposited by the Claimants and the following Forum Fees are assessed:

6 hearing sessions X \$750.00 = \$4,500.00

1 Pre-hearing telephone conference = \$300.00

Total amount assessable = \$4,800.00.

Forum fees assessed against:

1- Claimants, in the amount of \$1,600.00, however, Claimants may use their \$750.00 hearing session deposit to offset part of this fee, thereby the amount due and owing by Claimants equals \$850.00;

2- Respondent, Philip R. Incorvaia, in the amount of \$1,600.00.

3- Respondent, TimeCapital Securities Corp. in the amount of \$1,600.00.

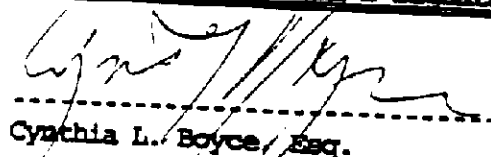
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

CYNTHIA L. BOYCE, ESQ.

PUBLIC/PANELIST

Concurring Arbitrator's Signature


Cynthia L. Boyce, Esq.

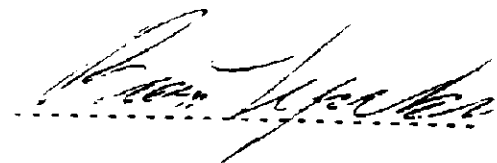
Dated: December 31, 1991

National Association
Securities Dealers, I
NASD Financial Centre
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

AWARD-#91-00411

STATE OF *NEW YORK* S.S.T
COUNTY OF *KINGS*

On this *21ST* day of *December*, 1991, before me personally appeared *CYNTHIA L. BOYCE, ESQ.* to me known and Known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that she executed the same.



BARI LEPELSTAT
Notary Public, State of New York
No. 24-01LE4817472
Qualified in Kings County
Commission Expires Jan 31 *1993*