

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Beatrice Irene Hansen

NASD Arbitration
No. 91-01359

Name of Respondents

Capital Growth Resources
R. N. (Hap) Dolbeck

REPRESENTATION

For Claimant: James C. Krause, Esq. - Reniche & Krause - San Diego, Ca.

For Respondent: Capital Growth Resources - William B. Treitler, Esq., Treitler & Montisano, San Diego, Ca.

For Respondent: R. N. (Hap) Dolbeck - Michael F. Brown, Esq., Schall, Boudreau & Gore, Inc., San Diego, Ca.

CASE INFORMATION

Statement of Claim filed: April 30, 1991

Claimant's Submission Agreement signed: April 22, 1991

Amended Statement of Answer and Third Party Claim and Cross-Claim of Respondent, R. N. Dolbeck filed on July 9, 1991.

Statement of Answer of Third Party Respondent, August Income Growth Fund IV and August Properties Fund III to Third Party Claim of R. N. Dolbeck and Third Party Claim filed August 30, 1991

Statement of Answer and Third Party Claim and Cross-Claim of Respondent Capital Growth Resources, Inc. filed on June 28, 1991

Respondent R. N. (Hap) Dolbeck's Submission Agreement signed: June 5, 1991

Respondent Capital Growth Resources' Submission Agreement signed: June 24, 1991

HEARING INFORMATION

Pre-Hearing Conference: October 30, 1992 - One Session

Hearing Dates/Sessions: November 24, 1992- Two Sessions
January 12, 1993 - Two Sessions

Hearing Location: San Diego, California

CASE SUMMARY

Claimant, Beatrice Irene Hansen (Hansen) alleged that Respondent, R. N. (Hap) Dolbeck (Dolbeck), while employed by Capitol Growth Resources, Inc. (CGR), recommended to Hansen the purchase of three funds which Hansen alleged were unsuitable in light of her, age, income and investment objectives.

Respondent, Dolbeck, alleged that Hansen's objective in agreeing to the investments at issue, did so in order to reduce her tax liability and that Hansen possessed full knowledge of the conditions and risks involved in the transactions alleged in her claim. Dolbeck also cross-claimed against the three funds for indemnification.

Respondent, CGR, alleged that at all times mentioned in the claims, CGR, acted in good faith and had no knowledge of or reasonable grounds upon which to believe in the existence of any of the facts complained of in the claim, and did not directly or indirectly induce any of the acts complained of.

CGR also filed a Third Party Claim for indemnification against the Funds at issue and also Cross-Claimed against Dolbeck.

RELIEF REQUESTED

Hansen seeks damages of \$4,000.00 for premature cancellation of CDs, the loss of her investment of \$85,000.00, interest damages at 10 percent simple interest minus payments received of \$31,251.00, for a total of \$120,251.00 .

Respondent and Third Party Claimant seeks dismissal of the claim in its entirety, costs and attorneys' fee and in the alternative indemnification.

Respondent and Third Party Claimant and Cross Claimant, seeks dismissal of the claim in its entirety, attorneys' fees, costs and indemnification.

OTHER ISSUES CONSIDERED & DECIDED

Respondents, Dolbeck and CGR, joined in a Motion to Dismiss under Section 15 of the NASD Code of Arbitration Procedure and on various Statutes of Limitations.

Said Motion was denied by the Arbitration Panel.

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 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. Respondent, Capital Growth Resources, is solely liable and shall pay to Claimant, Beatrice Irene Hansen, the sum of Forty Two Thousand, Four Hundred Thirty Two Dollars and Seventy Five Cents. (\$42,432.75).
2. Respondent, R. N. (Hap) Dolbeck, is solely liable and shall pay to Claimant, Beatrice Irene Hansen, the sum of Fourteen Thousand, One Hundred Forty Four Dollars and Twenty Five Cents (\$14,144.25)
3. Claimant's claim for interest is denied.
4. The parties shall each bear their respective costs and fees including attorneys' fees.
5. All Cross-Claims and Counter-Claims are dismissed.

6. Claimant shall release to Respondent, Capital Growth Resources, Inc., all right, title and interest in August Properties Fund III, August Income/Growth Fund VII, and Centennial Development Fund V, free of all encumbrances.
7. Respondent, Capital Growth Resources, Inc., shall pay to Claimant the sum of \$500.00 in payment for Claimant's hearing session deposit.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

1. Respondent, CRG, shall pay to the NASD the sum of \$1,350.00 representing an assessment of 75 % of the \$1,800.00 fees assessable.
2. Respondent, Dolbeck, shall pay to the NASD the sum of \$450.00 representing an assessment of 25 % of the \$1,800.00 fees assessable.

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

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
	Public Chairperson
	Public Panelist
	Industry Panelist

Date of Decision: _____

Served 2/12/93

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ARBITRATORS

Public/Industry
Public Chairperson
Public Panelist
Industry Panelist

Concurring Arbitrators' Signatures

Dr. S. C. Minter

Date of Decision: 1/27/93

Served 2/12/93