

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Michelle Haase

91-02312

Name of Respondents

Benefitcorp Equities, Inc. and  
William Corrin

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REPRESENTATION

Claimant, Michelle Haase was represented by Robert D. Mitchell, Esq. of Galbut & Associates of Phoenix, Arizona.

Respondent, William Corrin appeared pro se.

Respondent, Benefitcorp Equities, Inc. was represented by Scott F. Sulley, Esq. of Howard & Glenn, P.C., of Casa Grande, Arizona.

CASE INFORMATION

The Statement of Claim was filed with the NASD on July 29, 1991.

Claimant, Michelle Haase's Submission Agreement was signed on July 26, 1991 by Michelle Haase.

A Statement of Answer was filed with the NASD by Respondent, Benefitcorp Equities, Inc. on January 13, 1992.

Respondent, Benefitcorp Equities, Inc.'s Submission Agreement was signed on December 20, 1991 by Beverly A. Byrne, Assistant Secretary.

A Statement of Answer was filed with the NASD by Respondent, William Corrin on December 30, 1991.

Respondent, William Corrin's Submission Agreement was signed on December 27, 1991 by William Corrin.

HEARING INFORMATION

The hearing was held on Friday, August 14, 1992 in Scottsdale, Arizona for a total of two (2) hearing sessions.

CASE SUMMARY

Claimant, Michelle Haase ("Haase") alleged that Respondents, Benefitscorp, Equities, Inc. ("Benefitscorp") and William Corrin ("Corrin") sold her inappropriate and unsuitable investments given her age, financial circumstances and needs. Haase alleged that she informed Corrin of her plans to attend college and her wishes to have the money she inherited in the form of a trust fund from her father invested conservatively. Haase alleged that upon Corrin's representations she invested \$10,000 in International Investors, Inc., a gold mining stock investment fund; \$21,160.00 in the Saligman Capital Fund, an aggressive growth stock mutual fund and \$20,000 in "participating notes" in the August Income Fund 9, a California limited partnership formed to invest in trust deeds on apartments, industrial park complexes and other commercial real estate properties.

Haase alleged that Corrin and Benefitscorp made numerous misrepresentations and omissions of material fact to her in connection with the investments made for her account. The misrepresentations Haase alleged included without limitation:

- (i) that the investments were conservative and safe;
- (ii) that the investments were liquid such that the funds would be available for college expenses or an unexpected financial emergency; and
- (iii) that the investments were suitable and appropriate for Ms. Haase's financial needs and circumstances.

Haase alleged that the omissions of material fact included, without limitation:

- (i) that Corrin's investment strategy was fraught with substantial risk and that her entire principal could be lost;
- (ii) that the investments were illiquid, speculative and inappropriate for her college funding needs;
- (iii) that there were safer investments that would have better met her financial needs without substantial risk;
- (iv) that it was illegal to sell her the investment in August Income Fund 9; and
- (v) that Corrin and Benefitscorp would receive substantial commissions on these investments.

Haase alleged that the foregoing allegations supported causes of action

under Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder; the Federal Racketeer Influenced and Corrupt Organization Act (RICO); the Arizona Securities Act; the Arizona Racketeering Act; the Arizona Consumer Fraud Act; the California Corporate Securities Law; NASD and NYSE Rules; breach of contract; breach of agency and trust; breach of fiduciary duty; common law fraud; intentional and negligent misrepresentation.

Benefitscorp denied the allegations of the statement of claim and specifically denied that the investments were unsuitable for Haase or that Benefitscorp mishandled Haase's brokerage account directly or vicariously. Benefitscorp also specifically denied that any misrepresentations or omissions of material fact were made to Haase in connection with the purchases of the securities for her account.

Benefitscorp asserted a cross-claim for indemnification against Corrin in the event the arbitration panel determined to award Haase damages.

Corrin alleged that the investments made for Haase were fully explained to her and that they were to be treated as long term and not like a savings or checking account. Corrin also asserted that the investments were made prior to the largest stock market drop in history which could not have been foreseen. Corrin alleged that had Haase not liquidated her investments, she would have received a good return on her investments and alleged that the claim was unfounded and brought as a case of sour grapes by someone who was not knowledgeable about the true facts of the case.

Corrin did not answer the cross-claim.

#### RELIEF REQUESTED

Haase requested actual damages of not less than \$33,222.44, disgorgement of commissions, punitive damages of not less than \$100,000, treble damages under RICO and A.R.S. Section 13-2301, et seq. in an amount not less than \$99,667.32, pre-award and post-award interest on the above amounts, costs and attorney's fees incurred to bring this action and such other relief as the arbitrators deemed appropriate.

Benefitscorp requested dismissal of all claims and that Haase pay the attorney's fees and costs incurred by Benefitscorp to defend the action. In the alternative, Benefitscorp requested that Corrin indemnify Benefitscorp for any damages awarded by the arbitrators to Haase.

Corrin requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the hearing on August 15, 1992, the NASD was advised through a letter from Claimant's counsel dated August 14, 1992 that Haase had settled her claims against Benefitcorp. Claimant's counsel confirmed at the hearing on August 15, 1992 to the arbitrators that the Claimant had settled with Benefitcorp. The award, therefore, did not consider Haase's claims against Benefitcorp or the cross-claim of Benefitcorp against Corrin. Claimant's counsel advised the panel that the amounts claimed from Corrin would be amended in accordance with the terms of the settlement reached between Haase and Benefitcorp.

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. The arbitrators determined that claimant's investment in the August Income Fund 9 purchased through Respondent, Corrin was unsuitable. In addition, the panel determined that Corrin made material misrepresentations or omissions of material fact in connection with claimant's investment in August Income Fund 9. Accordingly, Corrin is liable for and shall pay to Haase the sum of One Thousand Five Hundred Dollars and No Cents (\$1,500.00). This sum awarded to Haase from Corrin was determined upon due consideration of the amount paid to Haase by Benefitcorp as a consequence of Haase's settlement of her claims against Benefitcorp. Further, this sum of \$1500.00 is to be paid to Haase by Corrin in addition to any monies paid to Haase by Benefitcorp as a consequence of Haase's settlement of her claims against Benefitcorp;

2. Interest is awarded on the above sum of \$1500.00 at the rate of ten percent (10%) per annum from the date the award is served on the parties until the award is paid;

3. All other claims asserted against Corrin are dismissed; and,

4. The parties shall each bear their own costs and attorney's fees other than the forum fees which are addressed below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit made to the NASD by Claimant, Haase. The NASD will also retain the \$500.00 non-refundable cross-claim filing fee and the \$750.00 hearing session deposit made by Benefitscorp with the NASD. Corrin is liable for and shall pay to the NASD additional Forum Fees of \$750.00 and shall directly reimburse Haase in the amount of \$950.00 which sum represents all deposits to the NASD by Haase to initiate this arbitration matter.

Forum Fees were calculated on the basis of 2 sessions at \$750.00 per hearing session for a total of \$1,500.00 minus the hearing session deposit of \$750.00 made with the NASD by Haase leaving a balance due of \$750.00 in Forum fees from Respondent, Corrin.

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

Concurring Arbitrators' Signatures  
Name

/S/ Richard L. Basinger  
Richard L. Basinger  
Presiding Chairman/Public Arbitrator

August 27, 1992  
Dated

/S/ Howard S. Baldwin  
Howard S. Baldwin  
Panelist/Public Arbitrator

September 3, 1992  
Dated

/S/ James L. Kirkman  
James L. Kirkman  
Panelist/Industry Arbitrator

August 27, 1992  
Dated

Date award served by the NASD: September 16, 1992