

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Richard & Kate Schaps

No. 91-02539

Name of Respondents

Paragon Capital Corporation
Douglas Telepman

REPRESENTATION OF PARTIES

For Claimants: Ronald Lev, Esq. of Ron Lev Ltd.

For Respondent Paragon Capital Corporation: Clifford E. Yuknis, Esq., and Dennis O. Boyle, Esq. of Shefsky & Froelich Ltd.

For Respondent Douglas Telepman: Douglas Telepman appeared pro se.

CASE INFORMATION

Statement of Claim filed: August 15, 1991.

Claimants' Submission Agreement signed on: July 29, 1991.

Statement of Answer filed by Respondent, Douglas Telepman on: September 26, 1991.

Respondent Douglas Telepman's Submission Agreement signed on: September 20, 1991.

Statement of Answer filed by Respondent, Paragon Capital Corporation on: October 15, 1991.

Respondent Paragon Capital Corporation's Submission Agreement signed on: October 11, 1991.

HEARING INFORMATION

Hearing date: March 20, 1992. 2 sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants Richard & Kate Schaps ("Claimants") alleged common law fraud, negligent misrepresentation, breach of fiduciary duty, and violation of federal securities laws arising out of transactions in the initial public offering of Club Theater Network ("CTN") shares for Claimants' account at Respondent Paragon Capital Corporation ("PCC"). Claimants opened their account in the spring of 1990. It was alleged that, on the advice of Respondent, Douglas Telepman ("Telepman"), Claimants made a purchase of 1,000 shares of CTN at \$5.00 per share on May 16, 1990, and an additional purchase of 2,000 of CTN at \$8 3/4 per share on May 22, 1990. Claimants alleged that during the period from June, 1990, through August of 1990, the price of CTN had steadily declined, and that over numerous contacts with Telepman, he was assured that the price would dramatically rise, that the decline was due only to some short selling, and that all of the holders of CTN were not selling. In September of 1990, Claimants further alleged that Telepman informed them that, in actuality, there had been large selling of shares by members of CTN's initial offering group, and that PCC had made a major or monumental error in the handling of the entire matter. The price of the CTN shares fell below \$2.00 per share in September of 1990. Lastly, Claimant stated that the misrepresentations of PCC and Telepman were material and made in reckless disregard for the truth, and Claimants reasonably relied on the same to their detriment.

In his Statement of Answer, Telepman admitted being employed by PCC during the period in question. Telepman further admitted advising Claimants to purchase the 3,000 total shares of CTN in May of 1990. Lastly, Telepman admitted that the price of CTN fell below \$2.00 per share in September of 1990. Telepman then denied each and every material allegation in the Statement of Claim. In addition, Telepman stated the following defenses:

1. At all times relevant, Telepman acted reasonably and in full compliance with all rules, laws, and statutes governing the activities of a stock broker.
2. At all times relevant, all representations made to Claimants were believed by Telepman to be true at the time they were made, based in large part upon information provided to Telepman by PCC.
3. Claimant, Richard Schaps, is an experienced, savvy investor, aware of the risks inherent in investments of the type made by Claimants in this matter.
4. Claimants never directed Telepman to sell their interest in CTN, although Telepman repeatedly advised Claimant of their option to make such instruction.
5. There is no causal connection between any activity

undertaken by Telepman and the damages allegedly suffered by the Claimants.

For its Statement of Answer, PCC did not dispute that Claimants opened an account with PCC in the spring of 1990, nor did PCC dispute that Telepman was an employee during the time in question. PCC also alleged that upon receipt of Claimants' initial complaint in March of 1991, PCC contacted Telepman, and Telepman denied ever refusing a sell order, and at all times advised Claimant, Richard Schaps, that the stock was liquid should he wish to sell it. A letter to this affect was sent to Ron Lev, Claimants' attorney, on April 4, 1991. PCC went on to state that if Claimants were truly adamant about selling CTN, they never voiced any complaint or request to Telepman's supervisor, nor to PCC's compliance department. Lastly, PCC alleged that no one from PCC purchased the CTN securities due to the prohibition contained in the NASD's Free-Riding and Withholding Interpretation.

RELIEF REQUESTED

Claimants requested an award in their favor in the amount of \$18,000 plus reasonable attorney's fees, and interest.

Respondent Telepman requested that the panel deny Claimants' claims in their entirety.

Respondent PCC requested that the panel deny Claimants' claims in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

A motion to amend the Statement of Claim was filed at the opening of the hearing. Telepman stated that he had nothing to say about the proposed amendment. PCC objected to the late filing of the proposed amendment, and also objected to the wording change in the body of the amendment. In defense of the proposed amendment, Claimants asserted that the only change made was to the damage requested. After reviewing the amendment, and deliberation, the Chairman ruled to deny the motion to file the amendment. However, the Chairman allowed Claimants to increase the amount of damages to whatever amount the Claimants could show with evidence produced at the hearing.

Claimants moved to dismiss Telepman from the arbitration at the end of Claimants' direct examination of Telepman. PCC objected to such dismissal, and moved to dismiss the entire proceeding. After hearing argument from both parties and deliberation, the Chairman granted Claimants' dismissal of Telepman, but required that Telepman remain as a witness. The Chairman took PCC's motion to dismiss under advisement to rule upon it at the conclusion of the arbitration.

The parties have agreed that the Award in this matter may be executed by 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

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

1. Claimants', Richard and Kate Schaps, claims against Respondent Douglas Telepman are hereby dismissed;
2. Respondent Paragon Capital Corporation's Motion to be dismissed is hereby denied and dismissed;
3. Respondent Paragon Capital Corporation is liable for, and shall pay to Claimants Richard and Kate Schaps the sum of \$1,5000.00 as satisfaction of their claims herein;
4. Each party shall bear their own costs; and
5. Forum fees shall be paid as set forth more fully below.

FORUM FEES

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

2 hearing sessions X \$300.00 = \$600.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall retain the hearing session deposit in the

amount of \$300.00 previously paid to the NASD by the Claimant.

Pursuant to Section 43 (c) of the Code of Arbitration Procedure, Claimants Richard and Kate Schaps are liable for, and shall pay to the NASD the sum of \$300.00 for the additional hearing session fees incurred on March 20, 1992.

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

Dated:

March 20, 1992

/s/Larry Carlson
Larry Carlson
Presiding Chair
Public Arbitrator