

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Karen A. Netwal

91-02713

Name of Respondents

Donna G. Carlton
Carlton and Associates, Inc.
InterCap Financial Corporation
John R. Frye, Jr.

REPRESENTATION

For Claimant Karen Netwal: Thomas A. Judd, Esq. of Lambert & Boeder, P.A.,
Wayzata, Minnesota.

For Respondents Donna Carlton and Carlton & Associates, Inc.: J. Patrick
Madigan, III of Aurora, Colorado.

For Respondents John Frye, Jr. and InterCap Financial Corporation: pro se.

CASE INFORMATION

Statement of Claim filed: August 30, 1991.

Claimant's Submission Agreement signed on: August 8, 1991.

Statement of Answer filed by Respondents, Donna Carlton and Carlton &
Associates on: October 30, 1991.

Respondents, Donna Carlton and Carlton & Associates's Submission Agreement
signed on: October 24, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: February 4, 1992 for one (1) session.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Karen Netwal ("Claimant") alleged that she invested in two private offerings: InterCap Mortgage Partners and Camacan, Inc. through Respondents John Frye and InterCap Financial Corporation. Claimant further alleged that she invested in the said offerings on the advice of Respondent Donna Carlton of Respondent Carlton & Associates, Inc. Claimant alleged that she understood Carlton to be her financial planner, but later became aware that Carlton was a broker/registered representative of Respondent InterCap Financial Corporation. Claimant alleged that Carlton represented that the investment was a "sure thing" which later was found to be a risky investment. Claimant alleged that had she known of Carlton's affiliation with InterCap, she would have been able to consider Carlton's investment advice on a more informed basis. Claimant alleged misrepresentation, suitability, and failure to disclose material facts in connection with the investments.

Respondents Donna Carlton and Carlton & Associates, Inc. ("Carlton") in their answer and motion for dismissal, cited Lampf v. Gilbertson, 501 U.S. 111 S.Ct.(1991) decision as the basis for their motion to dismiss. Carlton denied any fraud or inappropriate acts and affirmatively alleged Claimant's suitability. Carlton alleged that Claimant came to Carlton to make investments, not to do any financial planning. Carlton alleged that she made clear her status as a registered representative of a broker-dealer.

Claimant, in her reply to the answer and motion for dismissal, alleged that the respondent's motion to dismiss should be denied and further alleged that the Lampf decision is not relevant to the claim.

RELIEF REQUESTED

Claimant requested the return of the balance of her investment with respect to InterCap Mortgage Partners in the amount of \$10,000.00 plus interest in the amount of \$3322.74 and the return of her investment of \$7500 for Camacan, Inc. plus interest in the amount of \$2492.05, attorney's fees in the amount of \$7433.25, expenses in the amount of \$601.37 and costs.

Respondents Donna Carlton and Carlton & Associates requested that the claim be dismissed and that the Claimant be ordered to pay costs.

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.

Respondents John Frye, Jr. and InterCap Financial Corporation did not file an answer or a submission agreement. Under the authority of Section 29 of the Code of Arbitration Procedure, the panel determined that proper service of the claim was effected on said respondents before determining liability against them.

The panel denied Respondents Donna Carlton and Carlton & Associates motion to dismiss.

After the hearing but prior to rendering an Award, the panel was notified that Respondents Donna Carlton and Carlton & Associates filed for bankruptcy and that an automatic stay of arbitration had been rendered against them pursuant to U.S. Bankruptcy rules.

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 John Frye and InterCap Financial Corporation shall be and hereby are jointly and severally liable for and shall pay to the Claimant Karen Netwal damages in the amount of Seventeen Thousand Five Hundred Dollars and No Cents (\$17,500.00);
2. Respondents John Frye and InterCap Financial Corporation shall be jointly and severally liable for and shall pay to the Claimant Karen Netwal interest in the amount of Five Thousand Eight Hundred Fourteen Dollars and Seventy Nine Cents (\$5814.79);
3. Respondents John Frye and InterCap Financial Corporation shall be and hereby are jointly and severally liable for and shall pay to the Claimant Karen Netwal expenses and attorney's fees in the total amount of Eight Thousand Thirty Four Dollars and Sixty Two Cents (\$8034.62). The panel awarded attorney's fees under the authority of MSA Section 80A.23, Subdivision 2;
4. Each party shall bear their own costs and expenses incurred, other than those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 session X \$400 = \$400 minus hearing session deposit of \$400 = net \$0 due.

Respondents John Frye and InterCap Financial Corporation, jointly and severally, shall reimburse to the Claimant the hearing session fee previously deposited with the NASD in the amount of \$400.

By the Arbitration Panel:

Dated:

Cassandra Mihalchick, Esq.
Cassandra Mihalchick, Esq.
Public Arbitrator, Chairperson

April 9, 1992

Howard James Seesel, Jr.
Public Arbitrator

Randall L. Wetherille, Esq.
Industry Arbitrator

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9 April 1992

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By the Arbitration Panel:

Dated:

Cassandra Mihalchick, Esq.
Public Arbitrator, Chairperson

Edward James Seegal, Jr.
Public Arbitrator

Randall E. Matherville, Esq.
Industry Arbitrator

4-16-92