

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Malcolm Fein :

Claimant :

vs. :

Paragon Capital Corp. :

John Kenny :

Respondents :

CASE #92-00335
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 29, 1992, Claimant, Malcolm Fein, Esq., who appeared Pro Se, alleged that in 1991, through Respondent, John Kenny, an Account Executive with Respondent, Paragon Capital Corp. he purchased 300 shares of Megacard, Inc. at \$5.00 per share and subsequently, purchased an additional 500 shares at 8 5/8. Claimant further alleged that he later instructed Respondent, John Kenny to sell 300 shares of Megacard, Inc. at the bid price of 10 3/4, at which time, Respondent, John Kenny tried to talk Claimant out of the sale and actually refused to place the order. Claimant contended that when he notified Respondent, Paragon Capital Corp. of Respondent, John Kenny's refusal to place his order, they made Claimant an offer to sell the shares at 8 1/2 or 9 bid and pay him the difference to make up for what he would have received if the order had been accepted. Claimant further contended that Respondent, John Kenny's refusal to handle his order and Respondent, Paragon Capital Corp. failure to follow through on their offer, resulted in losses to his account.

Respondent, Paragon Capital Corp. by and through their Assistant Compliance Officer, Jerome J. Schwarzman, maintained that Claimant, Malcolm Fein held an account with them from October 4, 1991 to December 4, 1991, at which time, he purchased 300 shares of Megacard, Inc. at \$5.00 and another 500 shares at 8 5/8 through their account executive, Respondent, John Kenny. Respondent, Paragon Capital Corp. further maintained that Claimant's account was transferred to J.W. Barclay & Co. where Respondent, John Kenny is now employed. Respondent, Paragon Capital Corp. contended that no one with their firm made an offer to Claimant but rather attempted to have Respondent, John Kenny resolve the matter with

Claimant since he took the account with him to J.W. Barclay. Respondent, Paragon Capital Corp. further contended that the only relationship they had with Claimant was that of a full service broker/dealer.

Respondent, John Kenny maintained that at no time when he was employed with Respondent, Paragon Capital Corp. did Claimant, Malcolm Fein place an order to sell all or any part of his Megacard, Inc. position. Respondent, John Kenny further maintained that upon his departure from Respondent, Paragon Capital Corp., Claimant willingly transferred his account to his new firm, J.W. Barclay. Respondent, John Kenny contended that Claimant alleged that Respondent, Paragon Capital Corp. made an offer to settle this dispute and if so, Respondent, John Kenny had no knowledge of such an offer. Respondent, John Kenny further contended that he cannot be held liable for any such actions or intentions made by any employee of Respondent, Paragon Capital Corp. on his behalf. Respondent, John Kenny asserted that Megacard, Inc. stock price leveled off in late December 1991, at which time, Claimant initiated his complaint and upon receiving Claimant's complaint, Respondent, John Kenny sent the stock certificates to Claimant and ceased his relationship with him. Respondent, John Kenny further asserted that Claimant never placed an order to sell his position in Megacard, Inc., therefore, he is not liable for any loss.

RELIEF REQUESTED

Claimant, Malcolm Fein requested \$1,050.00 in actual damages plus interest and costs.

Respondent, Paragon Capital Corp. requested the claim be dismissed.

Respondent, John Kenny requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul T. Green, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 24, 1992, by the Respondent, Paragon Capital Corp. on March 9, 1992 and by the Respondent, John Kenny on March 4, 1992.

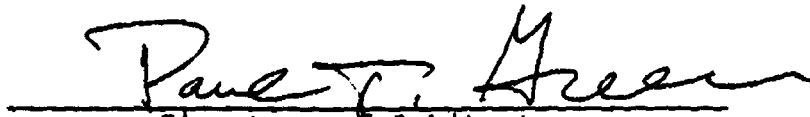
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And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant, Malcolm Fein against Respondents, Paragon Capital Corp. and John Kenny are dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Malcolm Fein shall be retained by the NASD, Inc.

AFFIRMATION

I, PAUL T. GREEN, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

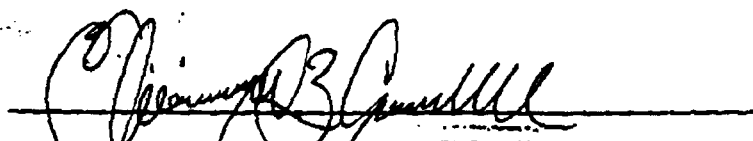
DATE OF DECISION: July 23, 1992

STATE OF: Connecticut

SS:

COUNTY OF: Fairfield

On this 20th day of July 19 92, before me personally appeared Paul T. Green to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



NOTARY PUBLIC
COMMISSION EXPIRES MARCH 31, 1993