

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Douglas J. Colton

vs.

NASD #92-01180

Name of Respondents

Capital Analysts, Inc.
Edward Williams

REPRESENTATION

For Claimant: Paul W. Thomas, Esq., Carlsbad, California.

For Respondents: George M. Garvey, Esq., of Munger, Tolles & Olson, Los Angeles, California.

CASE INFORMATION

Statement of Claim filed: April 3, 1992

Claimant's Submission Agreement signed: March 11, 1992

Statement of Answer filed by Respondents on: June 9, 1992

Respondents' Submission Agreements signed on:

Capital Analysts: April 30, 1992

Edward Williams: June 8, 1992

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: None

Hearing Date/ Sessions: February 18, 1992 (two sessions)
February 19, 1992 (one session)

Hearing Location: San Diego, California

CASE SUMMARY

Claimant alleged: Fraudulent, manipulative and deceptive sales practices, Negligence and Breach of the National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice. Title 10, California Code of Regulations Section 206.218.2, violation of the Securities Act of 1933 and Securities Exchange Act of 1934, breach of contract and intentional misrepresentation and negligent misrepresentation in the purchase of real estate limited partnerships. Respondent Edward Williams (Williams) created the impression of unlimited investment potential with no downside risk. The risk level was misrepresented and the partnership now is defunct.

Respondents denied all substantive allegations of the Statement of Claim and alleged: Full, accurate disclosure was made to claimants, a wealthy investor with substantial experience. Respondents did exactly what claimant asked: sold him real estate partnership he selected.

Claimant failed to mitigate damages and this investment was but one part of a diversified portfolio recommended by Williams. Claimant was given a choice of five different real estate partnerships and reviewed the written materials including risk factors. He was not told the promissory notes would never have to be paid and the investment was suitable for claimant, who ranked his tolerance for risk as "aggressive." Respondents also asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Actual damages of \$150,000.00;
2. Punitive damages of \$150,000.00
3. Costs, interest and attorney's fees in an amount subject to proof.

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.

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. All claims are dismissed.
2. The claim for punitive damages is dismissed.
3. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall retain the \$750 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Respondents, jointly and severally in the amount of \$1,500

calculated as follows: Three hearing sessions time \$750/session equals \$2,250, minus \$750 already paid by claimant as a hearing deposit.

Fees are payable to the National Association of Securities Dealers,

ARBITRATION PANEL

Name

William R. Newsome

Public/Industry

Public Arbitrator

Public Arbitrator

Industry Arbitrator

Concurring Arbitrators' Signature

William R. Newsome

William R. Newsome

DATE SERVED: 03/12/93

Date of Decision: Feb. 19, 1993