

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Sidney W. Barbanel
Sidney W. Barbanel, IRA Account

92-02331

Name of Respondents

Napex Financial Corp.
FSC Securities Corporation

REPRESENTATION

For Claimant: Sidney W. Barbanel, Jordan W. Kapchan, Esq. and Geraldine Barbanel, Esq., sole practitioners.

For Respondent: Clifford J. Hunt, Esq. of Riden, Earle & Keifner, P.A.

CASE INFORMATION

Statement of Claim filed: July 13, 1992.

Claimant. Sidney W. Barbanel's Submission Agreement signed on: June 25, 1992.

Claimant, Sidney W. Barbanel, IRA Account's Submission Agreement signed on: February 14, 1994.

Statement of Answer filed by Respondent, NAPEX Financial Corp. on: November 9, 1992.

Respondent, NAPEX Financial Corp. failed to execute a Submission Agreement as required pursuant to Section 12 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions: February 1, 1994 - One session.

Hearing Location: NASD offices located in New York City.

CASE SUMMARY

Claimant, Sidney W. Barbanel and Sidney W. Barbanel, IRA Account (collectively referred to as "Barbanel") alleges that he sold 160 units of Resource Accrued Mortgage Investors 86 to Respondent NAPEX Financial Corp. ("NAPEX") on March 19, 1992 and that Respondent NAPEX confirmed the transaction. Claimant further alleges that Respondent NAPEX has reneged and failed to pay.

Respondent NAPEX maintains that it acted only as agent in the transaction. Respondent further maintains that Claimant was informed that the bid would remain pending only for a period of two days, that Claimant attempted to accept the bid after it expired and that Claimant could not consummate the trade because the bid was withdrawn. Respondent maintains that the Claim does not state a cause of action upon which relief can be granted, that any alleged loss sustained by Claimant was not proximately caused by any wrongful act of Respondent NAPEX, that Claimant is contributorily negligent and that Claimant failed to mitigate his alleged damages. Respondent NAPEX further maintains that the Claim is frivolous and it is therefore entitled to an award of reasonable attorneys' fees pursuant to Section 57.105 of the Florida Statutes.

RELIEF REQUESTED

Claimant requests an award of \$15,200, as specific performance, plus costs.

Respondent requests that the Claim be dismissed in its entirety, plus an award of attorneys' fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, NAPEX Financial Corp. filed a Third-Party Statement of Claim against FSC Securities Corporation on November 9, 1992. On February 22, 1992, Respondent NAPEX submitted a Notice of Voluntary Dismissal with Prejudice regarding the Third-Party Claim filed against FSC Securities Corporation.

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:

- a) Respondent is hereby liable and shall pay to Claimant \$15,200.00, less any distributions received by Claimant with respect to the units in question from March 26, 1992 to the date hereof.
- b) Claimant shall execute and deliver all documents necessary to effectuate the transfer of title to the units in question to the Respondent.
- c) Respondent is hereby liable and shall pay to Claimant \$150 to reimburse Claimant for funds previously deposited with the NASD.
- c) All other claims are hereby dismissed.

FORUM FEES

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

\$100.00	Non-refundable filing fee for claim
\$500.00	Non-refundable filing fee for third party claim
\$300.00	Hearing session fees (1 session x \$300.00)

- 1) The NASD shall retain the \$100.00 non-refundable filing fee paid by the Claimant.
- 2) The NASD shall retain the \$500.00 non-refundable filing fee paid by the Respondent, Napex Financial Corporation.
- 3) The hearing session fee of \$300.00 is hereby assessed equally between the Claimant and the Respondent. Therefore, Claimant is assessed the amount of \$150.00. Claimant is entitled to offset this amount with the \$300.00 hearing session deposit paid to the NASD, Inc. Respondent is also assessed the amount of \$150.00 and is directed to re-imburse that amount to the Claimant.

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ARBITRATION PANEL

Howard S. Eilen, Esq. - Public Chairperson
Edward G. Toptani, Esq. - Public Arbitrator
Matthew J. Tolan - Industry Arbitrator

Concurring Arbitrator's Signature

A handwritten signature in black ink, appearing to read "Edward G. Toptani", written over a horizontal line.

Edward G. Toptani, Esq.

Executed on:

~~Date of Decision:~~ February 22, 1994

Date of Decision: March 4, 1994

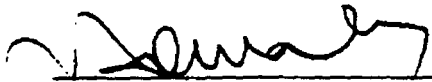
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ARBITRATION PANEL

Howard S. Eilen. Esq. - Public Chairperson
Edward G. Toptani. Esq. - Public Arbitrator
Matthew J. Tolan - Industry Arbitrator

Concurring Arbitrator's Signature



Howard S. Eilen. Esq.

Executed on: February 22, 1994
~~Date of Decision:~~

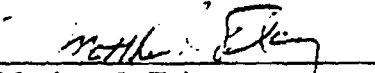
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ARBITRATION PANEL

Howard S. Eilen, Esq. - Public Chairperson
Edward G. Toptani, Esq. - Public Arbitrator
Matthew J. Tolan - Industry Arbitrator

Concurring Arbitrator's Signature


Matthew J. Tolan

Executed on: February 22, 1994
~~Date of Decision~~

Date of Decision: March 4, 1994

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 27th day of February 1994, before me personally appeared **MATTHEW J. TOLAN**, known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

A handwritten signature in cursive script, appearing to read "Maria A. Campese", written over a horizontal line.

MARIA A. CAMPESE
Notary Public, State of New York
No. 52-4965360
Qualified in Suffolk County 94
Commission Expires April 16, 1994

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 25th day of January, 1994, before me personally appeared **HOWARD S. ELLEN, ESQ.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

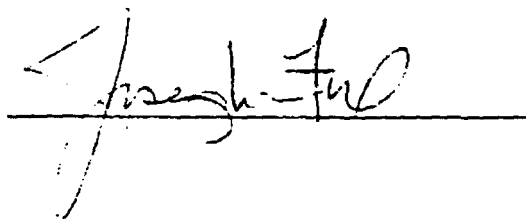
LEE D. LEVY
Notary Public, State of New York
No. 41-4671-000
Qualified in 1992
Jan 31, 1995

Lee D. Levy

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 23rd day of February, 1994, before me personally appeared EDWARD G. TOPTANI, ESQ. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

A handwritten signature, likely of the notary public, is written over a horizontal line. The signature is cursive and appears to read "Joseph L. Fox".

JOSEPH L. FOX
Notary Public, State of New York
No. 41-02F04802011
Qualified in Queens County
Commission Expires March 20, 96

2/21/95