

## **N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

**Morgan Park Clinic, LTD Profit Sharing Plan and Trust,  
Dr. Campaigne, Trustee, and the Morgan Park Clinic  
Limited Pension Plan, Dr. Campaigne, sole beneficiary  
and Dr. Campaigne, individually**

**92-03354**

**Name of Respondents**

**Hayne, Miller & Farni, Inc. and Daniel Bubalo**

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### **REPRESENTATION OF PARTIES**

**Morgan Park Clinic, LTD Profit Sharing Plan and Trust, Dr. Campaigne, Trustee ("Claimants") were represented at the hearing by Mark A. Mitchell, Esq. of Rider, Bennett, Egan & Arundel, Minneapolis, Minnesota.**

**Respondent Hayne, Miller & Farni, Inc. ("Hayne") was represented at the hearing by Gregory J. Stenmoe, Esq. of Briggs & Morgan, Minneapolis, Minnesota. Respondent, Daniel Bubalo ("Bubalo") was represented at the hearing by George E. Antrim, III, Esq. of Krause & Rollins, Minneapolis, Minnesota.**

### **CASE INFORMATION**

**The Statement of Claim was filed on October 5, 1992. Amended Statement of Claim filed on March 18, 1993. Second Amended Statement of Claim filed on May 16, 1994. Submission Agreement of Claimant was signed on September 15, 1992.**

**Statement of Answer was filed by Respondent Hayne Miller on February 3, 1993. Submission Agreement of Respondent Hayne was signed on February 18, 1993.**

**Statement of Answer was filed by Respondent Bubalo on February 3, 1993. Submission Agreement of Respondent Bubalo was signed on January 5, 1993.**

### **HEARING INFORMATION**

A pre-hearing conference was held on September 22, 1993 for one session and on April 7, 1994 for one session for a total of 2 sessions.

The hearing was held on May 11, 1994 for two sessions, and on May 12, 1994 for two sessions in Minneapolis, Minnesota for a total of 4 sessions.

### **CASE SUMMARY**

Claimants alleged that Respondents Hayne and Bubalo invested all of Claimant Morgan Park Clinic's money and purchased shares of a limited partnership in Safeguard Income Fund without authorization. Claimants further alleged that Bubalo and Hayne procured the sale of the limited partnership shares through fraud, deceit, and misrepresentation, and collusion. Claimants also alleged that Hayne was negligent and participated in dissemination of information which was materially false, misleading, fraudulent and deceitful. Claimants alleged that Bubalo and Hayne breached their fiduciary duty pursuant to ERISA Sections 401-414, 29 U.S.C. Sections 1101-1114.

Claimants amended their claim to include the Morgan Park Clinic Limited Pension Plan, Dr. Campaigne, sole beneficiary and Dr. Campaigne, individually. Claimants, in their second amendment to the claim added claims for unsuitability and punitive damages.

Respondent Hayne denied the allegations set forth in the claim. Hayne alleged that no trade was made without Claimant's approval. Hayne also alleged that Claimants were provided a copy of the private placement memorandum to review before investing in the limited partnership. Hayne also alleged that Bubalo complied with all rules and regulations.

Respondent Bubalo stated in his Answer that Dr. Campaigne personally signed documents authorizing the investment. Bubalo also stated that although he made recommendations, Campaigne was solely responsible for the investment decisions.

### **RELIEF REQUESTED**

Claimants requested that it be granted relief in the amount of \$250,000.00 against Hayne and Bubalo, jointly and severally, as well as attorney's fees, costs, and interest plus \$750,000 in punitive damages and any other relief.

Respondent Hayne Miller requested that the claims be dismissed and awarded their costs.

Respondent Bubalo requested that the claim be dismissed and that he be reimbursed his 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 N.A.S.D.

### **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 Hayne Miller and Farni, Inc. and Daniel Bubalo shall be and hereby are jointly and severally liable for, and shall pay to the Claimants, compensatory damages in the amount of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00);
2. Respondents Hayne Miller and Farni, Inc. and Daniel Bubalo shall be and hereby are jointly and severally liable for, and shall pay to the Claimants, punitive damages in the amount of One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00). The panel awarded punitive damages under the authority of Minn. Stat. Section 549.20 (1992);
3. Respondents Hayne Miller and Farni, Inc. and Daniel Bubalo shall be and hereby are jointly and severally liable for and shall pay to the Claimants, Ten Thousand Dollars (\$10,000.00) for non-compliance with the panel's discovery order;
4. Claimant's request for interest and attorney's fees is denied;
5. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for herein.

### **FORUM FEES**

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the N.A.S.D. by the Claimants.

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each prehearing conference. Therefore, the total amount of Forum Fees Due To The N.A.S.D. are \$600 for the two prehearing conference sessions plus \$2250 for the additional forum fees for a total of \$2850. The panel has ordered that Respondents Hayne Miller and Farni, Inc. and Daniel Bubalo are jointly and severally liable for the amount due of \$2850.

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

**By The Arbitrators:**

**Dated:**

Jack D. Elmquist, Esq. s/s  
Jack D. Elmquist, Esq.  
Public Arbitrator, Presiding Chair

7-11-94

Andrew R. Dick s/s  
Andrew R. Dick, Esq.  
Public Arbitrator

7-14-94

Gerald F. Wehler s/s  
Gerald F. Wehler  
Industry Arbitrator

7-11-94

Date Award Served By The N.A.S.D.: 7-14-94