

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Willis E. Spitzer

NASD Arbitration
No. 93-00233

Name of Respondent(s)

Advantage Capital Corporation
Meryl Azar

REPRESENTATION

For Claimant: Irwin Stein, Investors Recovery Service, Novato, California

For Respondents: James M. Peterson, Esq., Higgs, Fletcher & Mack, San Diego, California

CASE INFORMATION

Statement of Claim filed: January 18, 1993
Amended Statement of Claim Filed: January 27, 1993
Claimant's Submission Agreements signed: January 14, 1993 and February 2, 1993

Statement of Answer filed by Respondent Advantage Capital Corporation: April 22, 1993, on or about
Amended Statement of Answer filed by Respondents Advantage Capital Corporation and Meryl Azar: April 30, 1993
Respondents' Submission Agreements signed as follows:
Advantage Capital Corporation: April 21, 1993
Meryl Azar: April 22, 1993

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): May 3, 1994 (two sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged that his stated investment objective was safety of principal and income and alleged that Respondents failed to adequately inform him of the risks associated with the following investments: 1) Shurguard Realty Investors; 2) Phoenix Leasing; 3) Transcontinental Realty (Consolidated Capital); and 4) Franklin A.G.E. Fund. Claimant further alleged that Respondents violated Article III, Section 2 of the National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice.

Respondents denied any liability to Claimant and alleged that all of the investments that Meryl Azar recommended for Claimant were suitable in light of Claimant's financial resources and needs as described to Ms. Azar by Claimant. Respondents also asserted that Claimant's claims are ineligible pursuant to Section 15 of the NASD Code of Arbitration Procedure. Respondents also asserted additional defenses.

RELIEF REQUESTED

Claimant requested \$22,500.00 as well as any additional lost income, and any other monetary award the arbitration panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

At hearing it was determined that the panel was comprised of all public arbitrators. The parties stipulated to proceed with the panel as composed.

At the outset of the hearing, the panel reviewed and considered the positions of the parties relative to Respondents' Motion to Dismiss and denied the Motion.

The parties have agreed that the Award in this matter may be executed in either 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. Respondent Advantage Capital Corporation is solely liable for and shall pay to Claimant Willis E. Spitzer the sum of \$6,500.00.

2. Respondent Advantage Capital Corporation is solely liable for and shall pay to Claimant Willis E. Spitzer the sum of \$500.00 as reimbursement for Claimant's filing fee and hearing deposit.

3. All claims by Claimant against Respondent Meryl Azar are dismissed.

4. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$400.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against: Respondent Advantage Capital Corporation, solely, in the amount of \$400.00, calculated as follows: Two hearing sessions times \$400.00/session minus the \$400.00 hearing deposit retained by the NASD.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
James M. Knowles, Esq.	Public Arbitrator
Albert F. Wulfekuhler, III	Public Arbitrator
Robert A. White	Public Arbitrator

Concurring Arbitrators' Signatures

James M. Knowles, Esq.

Albert F. Wulfekuhler, III



Robert A. White

Date of Decision: 5/18/94

Date Served: 05/23/94