

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Joy Kingston

NASD Arbitration
No. 93-00622

Name of Respondent(s)

Michael Visbal

REPRESENTATION

For Claimant: Edward W. Russey, III, Investors Arbitration
Services, Inc., Woodland Hills, California

For Respondent: Mitchell J. Albert, Esq., Haight, Brown &
Bonesteel, Santa Monica, California

CASE INFORMATION

Statement of Claim filed: February 17, 1993

Claimant's Submission Agreement signed: February 10, 1993

Statement of Answer filed by Respondent: July 13, 1993

Respondent's Submission Agreement signed: July 13, 1993

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

March 4, 1994 (one session)

Hearing Date(s)/Session(s): June 2, 1994 (two sessions)

June 3, 1994 (two sessions)

June 14, 1994 (two sessions)

Hearing Location:

Los Angeles, California

CASE SUMMARY

Claimant alleged unsuitability with respect to the limited
partnership investments recommended and executed by Respondent and
alleged fraud and violations of the rules and regulations of the

various Exchanges, the customs and usages of the marketplace and/or California law and/or Federal law. Claimant further alleged breach of fiduciary duty, misrepresentations and omissions, intentional misrepresentation of fact, negligent misrepresentation, breach of the implied covenant of good faith and fair dealing and recommendation of speculative securities.

Respondent denied Claimant's allegations of wrongdoing and alleged that Claimant seemed to be intelligent, articulate, and well informed and that Claimant stressed that she was interested in receiving a periodic return on her investment and seemed to be very knowledgeable about her investment strategy, as well as her long term goals. Respondent further alleged that he discussed fully with Claimant the risks of the various investments Claimant became interested in and that prospectuses were provided in all instances. Respondent also asserted that all of Claimant's claims are time barred and that Claimant's Claim should be dismissed in its entirety because of the statute of limitations.

RELIEF REQUESTED

Claimant requested:

1. Losses in the amount of \$280,000.00;
2. Consulting fees of \$100,000.00;
3. Prejudgment and postjudgment interest at the highest legal rate;
4. Punitive damages in the amount of at least \$100,000.00;
5. Costs of suit; and
6. Such other and further relief as the arbitration panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the evidentiary hearing, the panel of arbitrators reviewed and considered the oral and written positions of the parties' representatives relative to Respondent's Motion to Dismiss under Section 15 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure (Code) and pursuant to the applicable statute of limitations. The panel of arbitrators determined that Claimant's Claim was filed February 17, 1993, and granted Respondent's Section 15 Motion to Dismiss with respect to Claimant's investments made prior to February 17, 1987, but retained jurisdiction with respect to Claimant's investments in Polaris Aircraft No. 3, Allstar Inns, and First Capital. Regarding the applicability of the statute of limitations to the three remaining investments, the panel ruled that they would render a decision on this issue following the presentation of testimony by the parties at the evidentiary hearing in this matter.

At the outset of the evidentiary hearing, the panel of arbitrators reviewed and considered the oral and written positions of the parties' representatives relative to Respondent's Motion to Dismiss under Section 12(d)(2) of the Code with respect to the claims relating to Claimant's investments in Polaris Aircraft No. 3 and Allstar Inns. The panel granted Respondent's Motion with respect to the Allstar Inns investment and denied the Motion with respect to the Polaris Aircraft No. 3 investment.

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, including the positions of the parties relative to Respondent's Motions to Dismiss based on the applicable statute of limitations, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Motions to Dismiss, asserted by Respondent Michael Visbal based on the applicable statute of limitations, are denied.
2. Respondent Michael Visbal is liable for and shall pay to Claimant the sum of \$26,117.00.
3. Claimant's claim for punitive damages is denied.
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 refund the \$750.00 hearing session deposit previously paid by the Claimant. Forum fees are assessed against: Respondent Michael Visbal, in the amount of \$4,800.00, calculated as follows: One pre-hearing session times \$300.00/session plus six hearing sessions times \$750.00/session.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Frank R. Smith, Esq.	Public Arbitrator
Irving S. Michelman	Public Arbitrator
Theodore G. Bradpiece	Industry Arbitrator

Concurring Arbitrators' Signatures

Frank R. Smith, Esq.

Irving S. Michelman

Irving S. Michelman

Theodore G. Bradpiece

Date of Decision: _____