

N.A.S.D. AWARD

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**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimants**

Philo Finch and Fern Finch

93-02047

**Name of Respondents**

The Bradbury Financial Group, Inc.;  
Randall Earl Bradbury;  
Securities America, Inc.

**REPRESENTATION**

For Claimants: Philo Finch and Fern Finch ("Finch") were represented by Eric S. Richards, Esq. of Warner, Norcross & Judd, located in Grand Rapids, Michigan.

For Respondent: Randall Earl Bradbury ("Bradbury") and The Bradbury Financial Group, Inc. ("Bradbury Group") were represented by Walter J. Piszczatowski, Esq. of Hertz, Schram & Saretsky, P.C., located in Bloomfield Hills, Michigan, for the purpose of requesting an adjournment at hearing, but not to defend the matter on the merits. Respondents Bradbury and Bradbury Group did not appear at hearing.

Securities America, Inc. ("Securities America") was represented by Danny L. Cvetanovich, Esq. and Nancy Manougian, Esq. of Arter & Hadden, located in Columbus, Ohio.

**CASE INFORMATION**

Statement of Claim filed: May 24, 1993.

Claimants' Submission Agreement signed on: June 22, 1993.

Statement of Answer filed by Respondents Bradbury and the Bradbury Group on: August 10, 1993.

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Respondent Bradbury's Submission Agreement signed on: August 10, 1993.  
Respondent Bradbury Group's Submission Agreement signed on: August 10, 1993 by Randall E. Bradbury, President, The Bradbury Financial Group, Inc.

Statement of Answer and Cross-Claims filed by Respondent Securities America on: August 10, 1993.

Respondent Securities America's Submission Agreement signed on: August 4, 1993 by P. Janine Jones, Senior Vice President, Securities America, Inc.

### **HEARING INFORMATION**

Pre-Hearing Conference: May 17, 1994 for One (1) session before One (1) arbitrator.  
Hearing Date/Sessions: June 16, 1994 for One (1) session.

Hearing Location: Southfield, Michigan.

### **CASE SUMMARY**

Claimants alleged that Respondent Bradbury, while employed by or acting as an agent for Respondents The Bradbury Group and Securities America, lost over \$130,000.00 in the Finch's IRA account through fraud, negligence or other misconduct. The Claimants specifically alleged that:

1. From May 12, 1992 through October 31, 1992, Bradbury churned the Finch IRA by making purchases of over \$430,000, representing a turnover rate of 3.3 in less than six months and generated approximately \$3,000 in "cash disbursements" received by Bradbury as fees for his services;
2. Bradbury engaged in blatant self-dealing and conversion by "loaning" funds in Finch's IRA to Advanced Financial Group, Inc., a company owned and controlled by Bradbury and his brother. Bradbury funneled approximately \$39,000 from Finch's account to Advanced Financial and the IRA received promissory notes for \$42,900, which have not been repaid;
3. On July 29, 1992 and August 1, 1992, Bradbury funneled \$49,875 from Finch's IRA to Paragon International, which is an assumed named for a business associate of Bradbury's named Zellers. The Finch's received a promissory note with a face value of \$50,000 with a due date of September 21, 1992. On January 15, 1992, approximately six months before the Finch's transactions, Zellers had sent correspondence to Bradbury Group reporting that he was unable to repay notes to Bradbury Group. It is believed that the Finch's monies went to repay some of the notes held by Bradbury Group; and

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4. When Finch opened his account with \$130,000, he stressed to Bradbury that these were retirement funds which he wanted invested in suitably conservative investments, and explicitly advised Bradbury not to invest in Carib-Med stock. Despite Bradbury's acceptance of these instructions, he purchased shares of the stock for Finch's IRA from persons who were insiders or agents for securities law purposes. The shares sold to Finch's IRA were not registered or exempt from registration under the securities laws of the State of Michigan and the U.S.A. either at the time of sale or upon original issuance of Carib-Med.

Based upon the above allegations, Claimants asserted claims against Bradbury and Bradbury Group for violation of state and federal securities laws involving securities fraud; common law fraud and breach of fiduciary duty; the Michigan Consumer Protection Act; and the federal RICO act. In addition, Finch asserted claims against Securities America pursuant to controlling person liability; respondeat superior; negligence; the Michigan Consumer Protection Act; and RICO.

Respondents Bradbury and Bradbury Group denied the material allegations of the Statement of Claim, alleging that:

1. The transactions made do not constitute churning. The initial purchase of mutual funds was made at the request of Finch and all commissions were discussed in the Money Management Agreement entered into by Finch. In addition, all fees were agreed to pursuant to the Money Management Agreement and Bradbury gave Finch a discount on the fees;
2. No money was "funneled" to either Advanced Financial Group or Paragon International. Advanced Financial Group, Inc. is owned solely by Bradbury's brother and a corporate discounted Promissory Note was issued by a legal and active corporation, accepted by Bradbury legally, and was done in good faith with the expectation that it would be paid. In addition, Bradbury was never a business associate of Zellers, d/b/a Paragon International, and the letter of January 15, 1992 that Zellers sent attesting to his inability to pay the notes was actually sent in 1993, but contained a typographical error. Furthermore, Advanced Financial intends to repay the note in full; and
3. When Finch opened his account, he signed a Money Management Agreement which allowed Bradbury to direct the investments. At no time did Finch ever name Carib-Med as an investment to be avoided. In addition, no shares were purchased in Michigan and no blue-sky laws were broken.
4. Pursuant to the Money Manager Agreement, Bradbury chose to reposition the assets in the account to avoid significant losses because of the warning of a stock

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market crash.

Respondent Securities America denied the material allegations of the Statement of Claim, asserting that only six transactions were made on Claimants behalf through Securities America, Claimants have alleged no losses from these transactions, the mutual fund securities purchased were suitable for Claimants IRA, and no churning occurred with these investments. In addition, Securities America asserted that Bradbury acted outside the scope of his employment, did not materially aid in the transactions Finch complains of, and did not receive any income from the transactions which form the basis of the RICO claims. In addition, Securities America asserted cross-claims against Bradbury and Bradbury Group for indemnification and contribution.

#### **RELIEF REQUESTED**

Claimants requested entry of an award against Respondents for the full amount lost of \$132,050.00, plus interest from May 12, 1992; treble damages pursuant to RICO; actual attorneys' fees; punitive damages; and any other relief the Panel found proper.

Respondents Bradbury and Bradbury Group requested that the Panel dismiss any and all claims made by Claimants; that Finch repay Bradbury and Bradbury Group for all attorneys' fees and costs; that Finch return the 1500 shares of Carib-Med stock; and that Finch refrain from defaming the Respondents' name.

Respondent Securities America demanded judgment on Claimants' claim and requested an award of costs it incurred in defending the claim. In addition, Securities America requested judgment in its favor on the cross-claims by way of contribution, and for interest, costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Claimants asserted claims against Trust Company of America, Advanced Financial Group, Inc., Greg Zellers, d/b/a Paragon International; and Carib-Med Inc., now known as A.G. Stanley Pharmaceuticals. These named Respondents were not subject to the jurisdiction of NASD arbitration, refused to voluntarily submit, and therefore all claims against them are dismissed without prejudice.

On April 11, 1994, the NASD was informed by letter that Respondent Securities America, Inc. had settled all claims made by Claimants and that Claimants had dismissed all claims against Securities America, Inc. On May 16, 1994, Respondent Securities America, Inc. dismissed without prejudice all cross-claims it asserted against Respondents Bradbury and the Bradbury Group, as well as the named Respondents who would not voluntarily submit to arbitration.

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At hearing on June 16, 1994, Walter J. Piszczatowski, Esq. of Hertz, Schram & Saretsky, P.C., appeared on behalf of Respondents Bradbury and Bradbury Group solely for the purpose of requesting adjournment. Based upon the records and files, the arguments of counsel on the record, and the record of the previously granted adjournments, including the ruling made during the conference call of May 17, 1994, the Panel unanimously ruled not to grant the request for adjournment and, pursuant to Section 29 of the NASD Code of Arbitration Procedure, proceeded with the hearing.

### **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 Randall Earl Bradbury and The Bradbury Financial Group, Inc. are jointly and severally liable for and shall pay to Claimants Philo Finch and Fern Finch the sum of \$132,050.00 as actual damages, plus interest in the sum of \$16,321.00;
2. In addition, Respondents Randall Earl Bradbury and The Bradbury Financial Group, Inc. are jointly and severally liable for and shall pay to the Claimants Philo Finch and Fern Finch the sum of \$25,600.00 as attorneys' fees. In deciding to award attorneys' fees, the Panel considered Claimants' arguments, as well as authority found, *inter alia*, at MCLA 541.810(a), Prince v. Heritage, 109 Mich App 189 (1981), and determined that authority existed for an award of attorneys' fees to the Claimants, Philo Finch and Fern Finch;
3. The total damages awarded above equal \$173,971.00. However, this amount shall be set-off for partial settlement in the amount of \$75,000.00. Therefore, the total adjusted claim for damages and the amount Respondents Randall Earl Bradbury and The Bradbury Financial Group are jointly and severally liable for is \$98,971.00;
4. The remaining costs of arbitration, including any attorneys' fees, shall be borne by the party incurring the cost; and
5. Any relief not specifically granted is hereby denied.

### **OTHER COSTS**

The National Association of Securities Dealers, Inc. shall retain the \$750.00 adjournment fee previously paid by Respondents Randall Earl Bradbury and The Bradbury Financial Group, Inc.

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**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Pre-Hearing Session before One (1) arbitrator x \$300.00 per session = \$300.00; One (1) hearing session x \$750.00 per session = \$750.00; Total Forum fees = \$1,050.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimants, Philo Finch and Fern Finch. Respondents Randall Earl Bradbury and The Bradbury Financial Group are jointly and severally liable for and shall pay to the Claimants, Philo Finch and Fern Finch, the sum of \$950.00 as reimbursement of the claim filing fee and hearing session deposit. In addition, Respondents Randall Earl Bradbury and The Bradbury Financial Group, Inc. are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$300.00.

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

**Concurring Arbitrators' Signatures**

Name

Date

/s/ Carole M. Crosby, Esq.  
Carole M. Crosby, Esq.  
Public Arbitrator  
Chairperson

September 6, 1994

/s/ Isadore Bernstein  
Isadore Bernstein  
Public Arbitrator

September 7, 1994

/s/ Frank G. Bank  
Frank G. Bank  
Industry Arbitrator

September 8, 1994

For NASD Use Only

Date of Decision: 9-13-94