

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Irving & Jean Judovin

Case No. 93-02160

Name of Respondents

Neil D. Schwartz, FPC Inc., Financial Planning Services, Inc., Financial Planning Insurance Agency Inc; NDS Financial Group, Inc., Ronald R. Molina, Financial Capital of America, Inc. and Financial Capital of America Investment Company, Inc. FPC Inc.

REPRESENTATION

For Claimants, Irving and Jean Judovin ("Judovins"): Patricia A. Shub, Esq. of Patricia A. Shub, P.A., Fort Lauderdale, Florida.

For Respondents, Neil D. Schwartz ("Schwartz"); FPC, Inc., ("FPC"); Financial Planning Services, Inc., ("FPS"); Financial Planning Insurance Agency, Inc., ("FPIA"); and NDS Financial Group, Inc., ("NDS"): Jeffrey M. Weissman, Esq. of Wiessman & Dervishi, P.A., of Fort Lauderdale, Florida.

For Respondents, Ronald R. Molina ("Molina"), Financial Capital of America, Inc., ("FCA") and Financial Capital of America Investment Co., Inc. ("FCAI"): pro-se.

CASE INFORMATION

Statement of Claim filed: July 13, 1993. Claimants' Submission Agreement signed: May 12, 1993.

Respondents Schwartz, FPC, FPS, FPIA and NDS's, Statement of Answer filed: September 10, 1993. Respondent Submission Agreements signed: September 7, 1993, by Schwartz on behalf of himself and FPC, FPS, FPIA and NDS.

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Case Information Cont.

Respondent, Molina's Submission Agreement signed: October 4, 1993 on behalf of himself and FCA and FCAI.

HEARING INFORMATION

On July 7, 1994, a pre-hearing conference lasting one session was conducted via telephone conference call with an arbitrator.

On November 8, November 9, November 10, November 11, November 19 and December 28, 1994, in Fort Lauderdale, Florida, hearings lasting 13 sessions were conducted.

CASE SUMMARY

Irving and Jean Judovin are a retired couple who had minimal understanding of investments and engaged the service of Neil Schwartz and his affiliated companies based upon Mr. Schwartz's representation of his superior qualifications and credentials and his written and oral representations that he would manage their financial affairs in such a way as to provide dependable reliable income and increase their assets commensurate with inflation. Although they were risk adverse and did not meet the minimum suitability standards for the non-public investments, Mr. Schwartz placed approximately half of the Judovins' portfolio into illiquid real estate related limited partnerships and a "fad drug" company, some of which were private placements and many of which were highly leveraged. Mr. Schwartz was a member of the Board of Directors of Financial Capital of America, a newly-established company which was the general partner of the real-estate private placements and the largest seller of their products.

Mr. Schwartz misrepresented the real estate investments at the outset and thereafter including carrying them at full value even when he knew that they had substantially decreased in value or were virtually worthless. In addition, Mr. Schwartz neglected the balance of the Judovins' portfolio causing it to perform at a substandard level.

Respondents, Schwartz, FPC, FPS, FPIA and NDS, denied all allegations of wrongdoing and alleged that Claimants were reasonably knowledgeable and sophisticated investors who understood risk of loss from prior business and investment experiences, had clearly defined investment objectives and maintained detailed records of their investments prior to and during their engagement of Respondents. Respondents were engaged to prepare an overall investment analysis and plan for Claimants entire financial situation. Claimants reviewed the plan and approved it. Respondent thereafter made appropriate recommendations

for suitable diversified investments which were reasonably designed, in light of their-existing facts concerning the Claimants' overall portfolio and the proposed investments, to implement the plan. Respondents were not given any discretionary investment authority and received no commissions or other funds except as were reasonable, fully disclosed and agreed to by Claimants. Claimants failed to prove any damages proximately caused by any of the alleged misconduct of the Respondents.

Respondents, Molina, FCA and FCAI, denied all allegations of wrongdoing and alleged that the Claim lacks in specificity any wrongdoing by or privy with Respondents and therefore should be dismissed.

RELIEF REQUESTED

Claimants requested rescissory damages of no less than \$300,000.00, compensatory damages, interests, costs and attorney's fees and such other relief as the Arbitration Panel deems appropriate.

Respondents, Schwartz, FPC, FPS, FPLA and NDS, request dismissal of all Claims and an award of Respondents costs, including reasonable attorney's fees and such other relief which the Arbitration Panel deems just and proper.

Respondents, Molina, FCA and FCAI, requests dismissal of the Claim and the award of cost and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

During the hearing held on November 11, 1994 the Arbitration Panel dismissed all claims against Respondent, Molina, FCA and FCAI in their entirety.

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 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:

Respondents, Schwartz, FPC, FPS, FPIA and NDS, are found not liable and, therefore, all claims against them are hereby dismissed.

Claimants' request for attorney's fees, interest and cost are denied.

Respondents request for attorney's fees and costs are denied.

OTHER COSTS

Other than as provided below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$10,050.00 (one pre-hearing conference x \$300.00 plus 13 hearing sessions x \$750.00 per session).

Claimants are hereby assessed \$5,025.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$4,275.00 payable to the National Association of Securities Dealers, Inc.

Respondents, Schwartz, FPC, FPS, FPIA and NDS, are hereby assessed \$5,025.00 jointly and severally payable to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

Name	Public/Industry
<u> /s/ </u> John J. Hearn, Esq.	Public
<u> /s/ </u> Herbert S. Karol	Industry
<u> /s/ </u> Gordon K. Grandy	Public

Date of Decision: February 15, 1995