

N.A.S.D. AWARD

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Marguerite D. Burgess

93-03291

Name of Respondents

Advantage Capital Corp.  
William N. Cadden & Co., Inc.  
William M. Leeb

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**REPRESENTATION**

Claimant Marguerite D. Burgess ("Burgess") was represented at the hearing by William N. Butler, Esq. of the law firm of Howard, Butler & Melfa, Towson Maryland.

Respondents Advantage Capital Corp. ("Advantage") and William M. Leeb ("Leeb") were represented at the hearing by Keara M. O'Donnell, Esq. of the law firm of Piper & Marbury, Washington, DC.

Respondent William N. Cadden & Co., Inc. ("Cadden") did not appear at the hearing.

**CASE INFORMATION**

The Statement of Claim was filed with the NASD by Claimant Burgess on August 20, 1993. The Uniform Submission Agreement was signed by Burgess on August 19, 1993.

A Statement of Answer was filed by Respondent Advantage on December 2, 1993. The Uniform Submission Agreement was signed by Leslie B. Jallans, Vice President and Compliance Officer, on behalf of Respondent Advantage on December 1, 1993.

A Statement of Answer was filed by Respondent Leeb on December 3, 1993. The Uniform Submission Agreement was signed by Leeb on December 1, 1993.

An Amended Statement of Claim was filed by Claimant Burgess on August 19, 1994.

A joint Answer to the Amendment to Claimant's Statement of Claim was filed by Respondents Advantage and Leeb on September 6, 1994.

A Response to Respondent's Answer to the Amended Statement of Claim was filed by Claimant on September 12, 1994.

Respondent Cadden did not respond to the Statement of Claim, or the Amended Statement of Claim. Respondent Cadden did not execute a Uniform Submission Agreement. (See "Other Issues").

### **HEARING INFORMATION**

The hearing was held on November 28, 1994 and November 29, 1994, at the OMNI Inner Harbor Hotel, Baltimore, Maryland, for a total of three (3) hearing sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents are liable for losses sustained in certain Limited Partnerships, REITs, and certain insurance products sold by the Respondents. Claimant alleged that funds invested by her consisted of a Certificate of Deposit, Money Market Accounts and Treasury Bills, and were derived from a pension distribution and savings. Claimant alleged that Respondent Leeb began to liquidate Claimant's funds and caused a series of trades which resulted in serious losses. Claimant further alleged that she told Respondent Leeb that she was very conservative and did not believe in taking risks. Claimant alleged that most of the investments made by Respondents were unsuitable for a sixty five (65) year old retired senior citizen and her spouse who was seventy six (76) years old at the time the purchases were effected in 1987, and who died in 1990. Claimant also alleged that she is unsophisticated in investment vehicles recommended to her by Respondent Leeb and only learned of the risks associated thereto from another broker dealer.

Respondents categorically denied all allegations of wrongdoing alleged by the Claimant. Respondents maintained that the investments made through and by Respondent Advantage and by Respondent Leeb were suitable in light of the Claimant and her husband's needs and financial resources as they described them to Respondent Leeb. Respondents maintained that the suitability of the recommended investments cannot be judged by hindsight, but rather must be judged as of the time the recommendations were made. Respondents maintain that the recommendations were made based on the information produced to Respondent Leeb by Claimant and by her husband, and Respondent Leeb believed that the investment recommendations he made were suitable. Respondents maintained that all of the securities that Claimant purchased through Respondent Advantage were considered to be relatively conservative investments at the time they were made and, with the exception of VMS, have performed well and Claimant took profits in them.

Respondents maintained that Claimant did not sustain any damages since the portfolio had a total gain

of \$35,875.25. Respondents further maintained that the losses claimed by the Claimant were caused by the recommendations made by a subsequent advisor and not by the Respondents.

### **RELIEF REQUESTED**

Claimant requested actual damages of \$50,000, pre-judgment interest, post-judgment interest, punitive damages, reasonable attorney's fees, and costs.

Respondents requested in their Answer that the Statement of Claim be dismissed in its entirety.

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

Upon review of the file and the representations made on behalf of Claimant, the panel had determined that Respondent William N. Cadden & Co., Inc. ("Cadden") has not been properly served with the Statement of Claim and the Amended Statement of Claim pursuant to Section 25 of the NASD Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent Cadden had not received due notice of the hearing as required under Section 26 of the Code and that therefore the Statement of Claim is dismissed as to Respondent Cadden, without prejudice.

The parties have agreed that the Award in this matter may be executed in counterpart copies. The parties have also agreed to receive conformed copies of the Award while the original remains 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. Respondents, Advantage Capital Corp. and William M. Leeb, shall be and hereby are jointly and severally liable for, and shall pay to Claimant, Marguerite D. Burgess, Forty Seven Thousand Dollars and No Cents (\$47,000.00), exclusive of interest.
2. Respondents, Advantage Capital Corp. and William M. Leeb, shall be and hereby are jointly and severally liable for, and shall pay to Claimant, Marguerite D. Burgess, Five Hundred and Twenty Dollars and No Cents (\$520.00) as reimbursement for the initial filing fee and hearing session deposit previously paid to the NASD by Claimant.
3. The Statement of Claim against Respondent William N. Cadden & Co., Inc. is hereby dismissed, without prejudice.
4. Each of the parties shall bear their own costs and expenses incurred, other than those

4. Each of the parties shall bear their own costs, <sup>ATTORNEY FEES WITHIN</sup> and expenses incurred, other than those specifically provided for herein.
5. Any relief not specifically provided for herein is denied.

**FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed:

3 hearing sessions x \$400 = \$1,200.

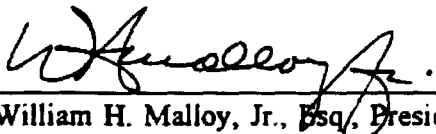
Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$120, and the hearing session deposit in the amount of \$400 previously paid to the NASD by Claimant.

The panel has ordered that the Respondents Advantage Capital Corp. and William M. Leeb, jointly and severally, pay additional forum fees to the NASD in the amount of \$800 to the NASD.

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

**By The Arbitration Panel:**

Dated: \_\_\_\_\_

  
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William H. Malloy, Jr., Esq., Presiding  
Public Arbitrator

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Janet Thomas Johnson, Esq.  
Public Arbitrator

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W. Thomas Gehrt  
Industry Arbitrator

Date Award Served By the NASD: 1/31/95

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23 Jan 95

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