

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert B. Kaplan

93-03308

Name of Respondents

Michael P. Black
Titan/Value Equities Group, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 24, 1993, Claimant Robert B. Kaplan, who appeared Pro Se, alleged that he purchased American Balance Fund and Fundamental Investors Fund upon the recommendation of Respondent Michael P. Black. The Claimant further alleged that he specifically requested that all dividends be reinvested, and that Respondent Black represented to Claimant that dividends were being reinvested, when, in fact, they were actually being placed into a lower yielding money market fund. Claimant Robert Kaplan alleged that Respondents made misrepresentations to him and acted negligently. Claimant further alleged that Respondents breached their fiduciary duties to Claimant and an implied covenant of good faith and fairdealing. Claimant contended that Respondent Titan/Value Equities Group, Inc. failed to adequately supervise Respondent Black in violation of Art. III, Section 27 of the NASD Rules of Fair Practice.

Respondent Michael P. Black, through his counsel, Charles A. Grombacher, Esq. of Graham & Associates, Ltd. of Phoenix, Arizona, maintained that he instructed Respondent Titan's order desk to reinvest dividends and capital gains. Respondent Michael Black further maintained that he regularly reviewed account statements with the Claimant, explaining that the dividends were being retained in money market accounts. The Respondent also maintained that Claimant later asked why the dividends were not being reinvested and that the Respondent discovered for the first time that he had originally ordered dividends to be reinvested and that Respondent Titan/Value Equities Group, Inc. for the first time, informed him that it was not possible for dividends to be reinvested at the time the mutual funds were purchased. Respondent Michael Black incorporated all affirmative defenses available to him under applicable rules of practice and maintained that he is entitled to contribution and/or indemnification from Respondent Titan/Value Equities Group, Inc. in the event he is determined to be liable.

Respondent Titan/Value Equities Group, Inc., through its in-house counsel, Steven McGinnis, Esq., generally denied each and every allegation of the Claimant. Respondent Titan/Value Equities Group, Inc. also maintained that there is no evidence that any damage was suffered by Claimant, and that his claim should therefore be denied. This Respondent further maintained that the Claimant received statements and had discussions with Respondent Black concerning the reinvestment of his dividends, and that he should have asked the Respondent to make the necessary corrections, instead of waiting until he was able to see which alternative turned out to be the most advantageous.

RELIEF REQUESTED

Claimant Robert Kaplan requested a joint and several award against Respondents for compensatory damages in the amount of \$4,901.00, pre-award and post-award interest at the maximum legal rate, plus costs of arbitration and expenses, including reasonable attorney's fees, the filing fee and any other costs deemed reasonable.

Respondent Michael P. Black requested that the Statement of Claim be dismissed in its entirety, plus an award for the costs of the arbitration and expenses, including reasonable consulting fees, filing fees and any other costs deemed reasonable, and that he be granted such other and further relief that the arbitrator deems just and proper.

Respondent Titan/Value Equities Group, Inc. requested that the Statement of Claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert A. Williams, Jr., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Robert Kaplan on August 14, 1993, by the Respondent Michael P. Black on October 8, 1993 and by Respondent Titan/Value Equities Group, Inc. on November 11, 1993.

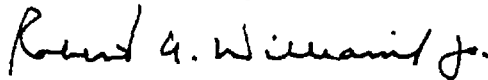
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Titan/Value Equities Group, Inc. is hereby liable and shall pay to the Claimant Robert Kaplan the sum of \$2,450.50 in actual damages.

2. Respondent Titan/Value Equities Group, Inc. is hereby liable and shall pay to the Claimant Robert Kaplan interest on this amount at the rate of 8% from August 14, 1993 until the date of payment of the Award.
3. The claim against Respondent Michael P. Black is dismissed in its entirety.
4. The parties shall bear their respective costs and attorney's fees.
5. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Titan/Value Equities Group, Inc. is hereby liable and shall pay to the Claimant Robert Kaplan the sum of \$125.00 as reimbursement for Claimant's filing fee.

AFFIRMATION

I, **ROBERT A. WILLIAMS, JR.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: March 18, 1994