

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Robert L. Teitelbaum

93-04473

Name of Respondents

Advanced Equity Group, Inc.  
Allied Capital, Inc.  
Donald Hector Caban  
John Joseph Puglisi  
Craig Medoff

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**REPRESENTATION**

For Claimant Robert Teitelbaum ("Teitelbaum") appeared Gregory Herbert, Esq. of the firm Satterlee Stephens Burke & Burke located in New York City, New York.

For Respondent Donald Caban ("Caban") appeared William Greenawalt, Esq. of the firm Loselle Greenawalt Kaplan Blair & Adler located in New York City, New York.

For Respondent John Puglisi ("Puglisi") appeared Jeffrey Plotkin, Esq. of the firm located in New York City, New York.

No representative appeared on behalf of respondents Advanced Equity Group, Inc., Allied Capital, Inc., or Craig Medoff.

**CASE INFORMATION**

The Statement of Claim was filed on October 21, 1993. Claimant's Submission Agreement was executed on February 1, 1994.

A Statement of Answer was filed by Respondent Caban on May 19, 1994. Respondent Caban's Submission Agreement was signed on April 26, 1994.

A Statement of Answer was filed by Respondent Puglisi on April 4, 1994. Respondent Puglisi's Submission Agreement was signed on April 13, 1994.

Respondents Advanced Equity Group, Inc., Allied Capital, Inc. and Craig Medoff did not file Statement of Answers or Submission Agreements.

## HEARING INFORMATION

Hearing Dates/Sessions:	July 19, 1995	-	Two Sessions
	July 20, 1995	-	Two Sessions
	August 18, 1995	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc., located in New York City, New York.

## CASE SUMMARY

Claimant Teitelbaum alleged that on May 5, 1992 he purchased 5000 shares, including A and B warrants, of Trinity Capital Opportunity Corporation ("TOCO") for \$34,390.00. On or about January 15, 1993, Claimant allegedly learned that Respondent Caban had been assigned as his new broker by the firm that was then servicing the account. Teitelbaum alleged that during the course of a conversation with Respondent Caban on January 15, 1993 in which Teitelbaum intended to sell the TOCO shares, Respondent advised him to hold onto the shares. Teitelbaum alleged that shortly thereafter, Respondent Caban contacted Teitelbaum and advised Teitelbaum he was with a new brokerage firm, Advanced Equity Group, Inc. ("AEG"), and successfully persuaded Claimant to transfer the account to AEG. Claimant alleged that during the course of this conversation, and on Respondent Caban's recommendation, Claimant authorized the sale of the 5,000 TOCO shares and the purchase of 5,000 shares of Visual Cybernetics Corp. ("VSCY"). Claimant alleged that the purchase of VSCY shares followed shortly thereafter, but that only 1,000 shares of TOCO were sold at 4 7/8 for \$4,710.45 several weeks later along with the unauthorized sale of TOCO A warrants for which Teitelbaum was charged a commission. Teitelbaum further alleged that following a phone call on March 3, 1993 to Respondent Caban, Caban sold the additional 4,000 shares at or approximately \$5 a share for a total of \$19,510.56.

Teitelbaum further alleged that during the course of a March 17, 1993 phone call, Claimant expressly declined Respondent Caban's recommendation to purchase Global Environmental Corporation ("GLEN"), but nonetheless, Respondent Caban engaged in unauthorized trading by purchasing 75,000 shares of GLEN and purchasing 3,000 additional shares of VSCY. Teitelbaum alleged that approximately one month later, he requested that his entire portfolio be sold after learning that AEG and Allied Capital, Inc. ("Allied") had engaged in some type of merger or consolidation, but that Respondent Caban failed to sell 10,000 VSCY shares at the \$7 1/2 per share quoted by Caban for the sale. Claimant asserted that Respondent failed to issue a check to Claimant for the portfolio value; that despite the promises of several individuals at the firm to issue a check for the proper amount, including that of Respondent Medoff, the owner of Allied, no such check was received; that instead of receiving a check for \$81,810.20, Claimant received a check for \$5,275.20 for the sale of 3,000 TOCO A warrants and 5,000 TOCO B warrants. Teitelbaum claimed that this amount was \$1,544.80 less than the amount due and owed for the warrants sold.

Teitelbaum further alleged that on or about June 21, 1993, he was informed by AEG that it and Allied had gone out of business as of the end of May and arranged to have the 10,000 shares of VSCY transferred to Merrill Lynch where the shares were sold for \$1 1/8 per share for a total of \$10,657.16.

Teitelbaum alleged that the above actions constitute a violation of section 10(b) of the Securities Exchange Act, Rule 10b-5, conversion, misrepresentation, fraud, breach of contract, breach of fiduciary duty, and unauthorized trading.

Respondent Caban denied any liability to Claimant. Caban maintained that the Statement of Claim contained many erroneous descriptions of the communications that occurred between the parties. Further,

Caban denied engaging in unauthorized trading and denied the allegations that Claimant instructed Respondent Caban to sell Teitelbaum's entire portfolio.

Respondent Puglisi denied any liability to Teitelbaum. Puglisi maintained that he never handled the account in question. It was the contention of respondent Puglisi that his only involvement with the claimant was to place a telephone call to Teitelbaum as he had been requested to do by one of the sales managers. Respondent Puglisi maintained that Teitelbaum related to Puglisi problems that he was having with regard to his account, which Puglisi then relayed to Medoff, the Managing Director of the firm. Respondent Puglisi further maintained that Medoff advised Puglisi that the sale of Visual Cybernetics should be honored and Puglisi in turn conveyed this information to Teitelbaum.

Respondent Puglisi maintained that he only made one phone call to Teitelbaum at the request of his superiors and all future calls from Teitelbaum were directed to Medoff.

Respondent Puglisi maintained that he was never given an order to buy or sell for Teitelbaum's account and never solicited any business from Claimant. As a result of the role played by Respondent Puglisi, he maintained that he is an improper party to this arbitration.

#### **RELIEF REQUESTED**

Teitelbaum requested compensatory damages of \$67,442.84, loss of profit and exemplary damages in an amount to be determined by the panel, costs and disbursements and such other and different relief as the panel may deem just.

Respondent Caban requested a dismissal of the Claimant's Statement of Claim, attorneys' fees, costs and disbursements incurred in defending the claim and such other relief as the arbitrators may deem just and proper.

Respondent Puglisi requested that he be dismissed as a respondent and that his costs of defending this action be assessed against Teitelbaum.

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

At the hearing, Respondent Puglisi asserted a Motion to Dismiss maintaining that he was improperly named as a party to this arbitration. After considering Puglisi's request for a dismissal, the panel determined to grant the motion for a dismissal with prejudice of all claims asserted in the statement of claim against John Joseph Puglisi.

This panel made the following rulings as to Respondents Advanced Equity Group, Inc., Allied Capital, Inc. and Craig Medoff all of which did not file and present properly executed submission of the dispute to NASD Arbitration (i.e. Submission Agreements) and failed to appear at the New York Evidentiary hearings conducted in this matter without obtaining any adjournment/postponement thereof:

- (1) Pursuant to Section 1 of the NASD Code of Arbitration Procedure ("Code") the panel found subject matter jurisdiction over this entire controversy and specifically as it related to respondents Advanced Equity Group, Inc., Allied Capital, Inc. and Craig Medoff.
- (2) The panel found that Medoff was a person associated with NASD members namely, Advanced Equity Group, Inc. and Allied Capital, Inc. at the time this controversy arose.

Consequently, the panel found personal jurisdiction over Medoff pursuant to Section 12(a) of the Code. Additionally, Medoff executed a Form U-4 requiring him to arbitrate at this forum upon demand of the Customer Claimant.

- (3) Pursuant to the By-laws of the NASD, the Arbitrators determined that Respondents Advanced Equity Group, Inc., Allied Capital, Inc. and Craig Medoff had "due notice" of the claim, even though actual notice was not accomplished after numerous reasonable attempts were made, and were required to submit to this arbitration proceeding; and is, therefore, bound by the panel's ruling and determination.

The parties present at the evidentiary hearings 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 original 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:

1. Respondents Advanced Equity Group, Inc., Allied Corporation, Craig Medoff and Donald Caban be and hereby are jointly and severally liable to the claimant in the sum of \$ 64,242.84, interest specifically excluded.
2. Claimants request for exemplary damages be and hereby are denied.
3. Each party shall bear their respective costs, including attorneys fees.
4. All other claims and counterclaims be and hereby are dismissed with prejudice.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

6 hearing sessions x \$ 600.00                      =              \$3,600.00

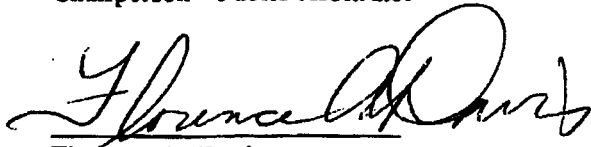
The forum fees are assessed against:

1. Respondents Medoff, Advanced Equity Group Inc., and Allied Capital Corporation be and hereby are be jointly and severally liable to the NASD in the sum of \$ 3,600.00, representing the forum fees assessed for this arbitration.

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

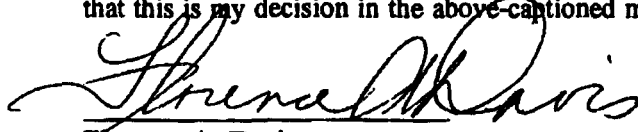
Concurring Arbitrators' Signatures  
Name

\_\_\_\_\_  
David M. Kaplan  
Chairperson - Public Arbitrator

  
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Florence A. Davis  
Industry Arbitrator

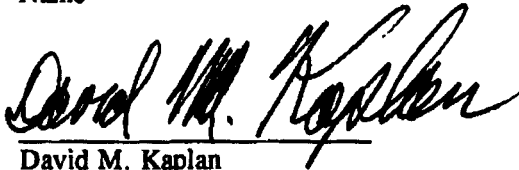
\_\_\_\_\_  
Eugene F. Farabaugh  
Public Arbitrator

I, **Florence A. Davis**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules,  
that this is my decision in the above-captioned matter.

  
\_\_\_\_\_  
Florence A. Davis

Date of Decision: December 1, 1995

Concurring Arbitrators' Signatures  
Name



David M. Kaplan  
Chairperson - Public Arbitrator

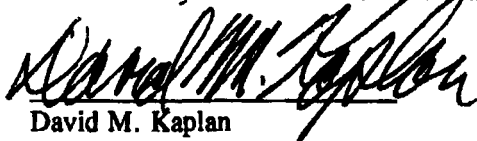
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Florence A. Davis  
Industry Arbitrator

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Eugene F. Farabaugh  
Public Arbitrator

I, **David M. Kaplan**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules,  
that this is my decision in the above-captioned matter.



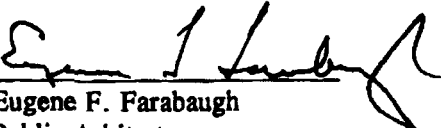
David M. Kaplan

Date of Decision: December 1, 1995

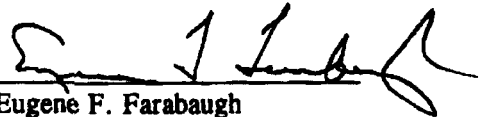
**Concurring Arbitrators' Signatures**  
**Name**

\_\_\_\_\_  
David M. Kaplan  
Chairperson - Public Arbitrator

\_\_\_\_\_  
Florence A. Davis  
Industry Arbitrator

  
\_\_\_\_\_  
Eugene F. Farabaugh  
Public Arbitrator

I, **Eugene F. Farabaugh**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

  
\_\_\_\_\_  
Eugene F. Farabaugh

Date of Decision: December 1, 1995