

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Raymond T. Rosati

vs.

Case #
93-05266

Name of Respondent

Guntis Lambergs

REPRESENTATION

For Claimant, Raymond Rosati ("Claimant"), Bruce S. Bandes, Esq., located in West Sayville, New York.

Respondent, Guntis Lambergs ("Respondent") did not appear at the hearing.

CASE INFORMATION

Statement of Claim was filed on December 10, 1993.

Claimant's Submission Agreement was signed on December 15, 1993.

Respondent did not file a Statement of Answer or submit a Submission Agreement.

HEARING INFORMATION

Hearing Date/Session: November 28, 1994 - 1 session

Hearing Location: NASD offices located in New York, New York.

CASE SUMMARY

Claimant alleges that since retiring in June, 1991 a substantial percentage of his income was derived from his retirement benefits and that aside from these retirement funds, his principal

assets consisted of approximately \$5,000 invested in stocks and his home valued at approximately \$150,000. Claimant also alleges that when he opened his account at Josephthal Lyon and Ross, Inc. in February, 1992, he told his Respondent that he was an unsophisticated investor with occasional investments in stocks or mutual funds.

Claimant further alleges that the first purchase in the account were shares of Silicone Pharmaceutical stock but shortly thereafter, Respondent suggested an investment in a bridge financing opportunity with Capital First Mortgage Corporation ("Capital First"). Claimant states that Respondent stated that Capital First would be "the best investment you or I ever made", that the investment showed great potential for profit, and that it was extremely safe. Claimant also states that when he questioned the safety of the investment Respondent stated that he specialized in these transactions and was very selective and careful when choosing investments and that he had never had a loss with this type of investment.

Claimant alleges that he explained to Respondent that the only money he had available for investment was already invested in his IRA or his pension fund. Claimant further states that Respondent assured him of the tremendous potential of the investment and convinced Claimant to transfer \$25,000 from his retirement fund into an IRA at Josephthal. Claimant maintains that the \$25,000 was removed from his IRA and a check was issued to Capital First on or about April, 14, 1992.

Claimant maintains that several weeks later Respondent called Claimant and stated Capital First was moving up the date of their initial public offering and was allowing investors who had already invested to get first chance at investing more money. Claimant alleges that Respondent assured him that the investment would be returned with ten percent interest within a couple of months. Claimant states that he informed Respondent that it would be possible to obtain an additional \$50,000 but he could only do so by borrowing against his pension fund and Respondent strongly recommended that Claimant borrow the money because of the extremely secure nature of the investment which would yield a high rate of return and large profits. Claimant also states that as a result of these representations and assurances made by Respondent, he invested the additional sum of \$50,000 on or about April, 21, 1992.

Claimant alleges that at the time Respondent first advised him of Capital First, he knew or should have known that Capital First was in bad financial condition and was using all money invested to pay current debt rather than use it for its public offering. Claimant also alleges that when he made his second investment in Capital First Respondent knew or should have known that Capital First was insolvent. Claimant further alleges that within one year of the investment, Capital First filed for bankruptcy.

Claimant states that the investments were completely unsuitable in light of his financial as a retired school teacher who depended on his retirement benefits for living expenses and a net worth that consisted of a pension, small investments in stock and his home. Additionally, the

Claimant states that he specifically told Respondent that he could not afford to lose any portion of his retirement funds and needed investments that were safe, and would not involve high risks.

Claimant alleges that as a result of Respondent's conduct, he breached the fiduciary duty owed to the Claimant, committed fraud and violated the NASD Rule of Fair Practice and the 1934 Securities and Exchange Act particularly Sections 10(b) and 10(b-5).

RELIEF REQUESTED

Claimant requests \$75,000 plus commissions for losses in the Capital First Private Placement, interest payments on a loan from his pension in the amount of \$2,842.83 for each quarter between April, 1992 and October 20, 1993, lost income which would have been generated from his retirement fund and punitive damages.

OTHER ISSUES CONSIDERED & DECIDED

Claimant has agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copy of the Award while the original remains on file with the NASD.

Mr. Lamberg did not appear at the hearing. After reviewing the notices sent to Mr. Lamberg and after considering the statements of Claimant's counsel concerning notices sent to Mr. Lamberg, this panel has determined that Mr. Lamberg was notified of this matter pursuant to Section 25 of the *Code of Arbitration Procedure* ("*Code*") and proceeded with the hearing in his absence.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Guntis Lamberg is hereby ordered to pay to Claimant **FIFTY THREE THOUSAND TWO HUNDRED EIGHTY DOLLARS AND ZERO CENTS (\$53,280.00)** in compensatory damages which includes interest and consequential damages. Mr. Lamberg is also ordered to pay **TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$25,000.00)** in attorney's fees. Mr. Lamberg is further ordered to reimburse Claimant **SIX HUNDRED AND FIFTY DOLLARS (\$650.00)** for forum fees previously paid by Claimant as indicated in the Forum Fees section of this decision.

All other claims for relief are denied.

Case #93-05266

Page 4

FORUM FEES

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

Non-refundable Filing Fee: \$150.00

Hearing Session Fees: \$500 (1 session x 500 per session)

Total Fees: \$650.00

Total Forum Fees in the amount of \$650.00 are hereby assessed against Mr. Lambergs.

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

ARBITRATION PANEL

Robert D. Owen, Esq. - Public Chairperson

Jack Wigler - Public Panelist

Edmund L. Carey, Jr. - Industry Panelist

Concurring Arbitrator's Signature


Robert D. Owen, Esq.

Date of Decision: March 17, 1995

FORUM FEES

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

Non-refundable Filing Fee: \$150.00

Hearing Session Fees: \$500 (1 session x 500 per session)

Total Fees: \$650.00

Total Forum Fees in the amount of \$650.00 are hereby assessed against Mr. Lamberg.

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

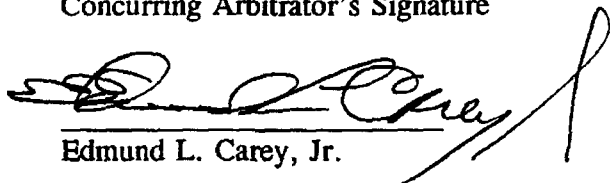
ARBITRATION PANEL

Robert D. Owen, Esq. - Public Chairperson

Jack Wigler - Public Panelist

Edmund L. Carey, Jr. - Industry Panelist

Concurring Arbitrator's Signature


Edmund L. Carey, Jr.

Date of Decision: March 17, 1995

FORUM FEES

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

Non-refundable Filing Fee: \$150.00

Hearing Session Fees: \$500 (1 session x 500 per session)

Total Fees: \$650.00

Total Forum Fees in the amount of \$650.00 are hereby assessed against Mr. Lambergs.

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

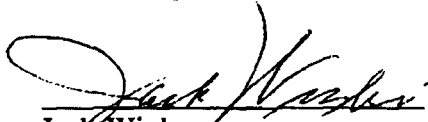
ARBITRATION PANEL

Robert D. Owen, Esq. - Public Chairperson

Jack Wigler - Public Panelist

Edmund L. Carey, Jr. - Industry Panelist

Concurring Arbitrator's Signature

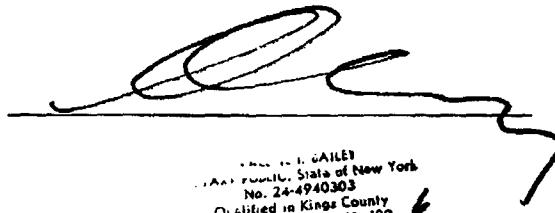

Jack Wigler

Date of Decision: March 17, 1995

STATE OF: *N.Y.*
COUNTY OF: *N.Y.*

S.S.:

On this *28th* day of *February*, 199*7*^{*5*}, before me personally appeared Robert D. Owen, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

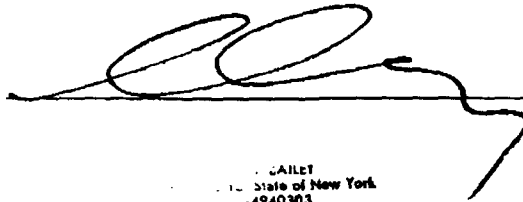


THOMAS H. GALEY
Notary Public, State of New York
No. 24-4940303
Qualified in Kings County
Commission Expires July 18, 199*7*

STATE OF: *N.Y.*
COUNTY OF: *N.Y.*

S.S.:

On this *28th* day of *May*, 199*4*^{*5*}, before me personally appeared Jack Wigler known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



NOTARY PUBLIC
State of New York
No. 4940303
Kings County
May 18, 199*6*

STATE OF: *New York*
COUNTY OF: *New York*

S.S.:

On this *6th* day of *March*, 199*9*^{*5*}, before me personally appeared Edmund L. Carey, Jr. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



WALTER L. BAILEY
Notary Public, State of New York
No. 4940303
Kings County
March 18, 199*9*^{*6*}