

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John E. Pflieger, Sr.

94-01738

Name of Respondents

Capital Investment Managers, Inc.
and S. Gregory Smith

REPRESENTATION

For Claimant John E. Pflieger, Sr. ("Claimant"): Arthur M. Schwartzstein, Esq. of the law firm of Arthur M. Schwartzstein, P.C.

For Respondents Capital Investment Managers, Inc. and S. Gregory Smith ("Respondents"): S. Gregory Smith

CASE INFORMATION

Statement of Claim filed: May 9, 1994

Claimant's Submission Agreement signed on: April 22, 1994

Joint Statement of Answer filed by Respondents on: August 3, 1994

Respondents' Submission Agreement signed on: August 1, 1994

HEARING INFORMATION

Hearing Dates/Sessions: May 22, 1995 - two session

May 23, 1995 - one session

Hearing Location: NASD District Office, Washington, D.C.

CASE SUMMARY

Claimant alleged, among other things, that Respondents made material misrepresentations, omitted material facts in regard to Claimant's investment in Capital Advisor Acquisition Corp. ("CAAC"), Capital Investment Managers, Inc. ("CIMI"), Fundamental Focus Fund ("FFF") and Chevy Chase Savings Bank ("CCSB"). Claimant alleged that Respondent Smith failed to be properly licensed in the District of Columbia. Claimant further alleged that Respondents violated federal and state securities laws, committed common law fraud, negligently handled Claimant's account, and breached implied and expressed contracts with Claimant. Claimant alleged that Respondents are also liable to Claimant for breach of fiduciary duty and violations of the RICO Statute.

Respondents denied each and every allegation of wrongdoing asserted by Claimant. Respondents maintained, among other things, that not only did Claimant not lose money but that Claimant's investments grew in value. Respondents maintained that the nature of each and every investment was fully explained to the Claimant. Respondents maintained that Claimant has tried to ruin Respondents reputation and financial viability by a calculated process of misinformation and abuse. Respondents maintained that they did not breach any fiduciary responsibilities to Claimant.

RELIEF REQUESTED

In Claimant's claim, he requested damages in the amount of \$436,495.00, plus treble damages, punitive damages, interest, costs and attorney's fees in a amount to be proved at the hearing but approximately in the amount of \$1.5 million.

Respondents requested that Claimant's claim be denied in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) remain on file with the NASD.

That the shares of CAAC that the Claimant asserts that he inherited from his step grandmother are not being considered as part of this Arbitration Award.

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:

1. That Respondents are jointly and severally liable to the Claimant on the Claimant's CAAC investment and shall pay to Claimant the sum of \$5,000. Respondents shall pay interest on this amount at the rate of six percent (6%) simple interest per annum from March 21, 1989 until the date the Award is paid. Upon receipt of payment in full, Claimant is directed to surrender any shares Claimant owns to Respondents, if the Respondents provides evidence to the Claimant that the Claimant ever took possession of the CAAC shares. If the Respondent can not provide evidence to the Claimant that the Claimant received the CAAC shares, the Respondents shall pay the Claimant the sum of \$5,000 and the interest as set forth above without the Claimant providing CAAC shares.
2. That Respondents are jointly and severally liable to Claimant on the investment in CIMI and shall pay to Claimant the sum of \$125,000. Respondents shall pay interest on this amount at the rate of six percent (6%) simple interest per annum from October 9, 1992 until the date the Award is paid. Upon receipt of payment in full, Claimant is directed to surrender his 25,000 shares of CIMI to Respondents.
3. That the relief requested by Claimant for his investment in FFF is denied in its entirety.
4. That the relief requested by Claimant for his investment in CCSB is denied in its entirety.
5. That the parties shall bear their respective attorney's fees.
6. That Claimant's requests for punitive damages and treble damages are denied in their entirety.
7. That the parties shall bear their respective costs except as specifically addressed herein.

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8. Any and all other relief requests not specifically addressed are denied in their entirety.

FORUM FEES

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

3 sessions X \$1,000 = \$3,000 minus hearing session deposit of \$1,000 = net \$2,000 due.

The Arbitrators have decided that the remaining forum fees in the amount of \$2,000 are assessed against Respondents jointly and severally.

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

Name

Paul A. Yates
Paul A. Yates

Arbitrator's Signature
Public/Industry

Paul A. Yates

Marshall Passman
Marshall Passman

Michael R. Levy, Esq.
Michael R. Levy, Esq.

Date Award Served by the NASD:

June 19, 1995

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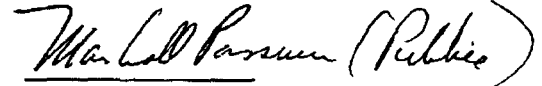
Name	Arbitrator's Signature Public/Industry
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Paul A. Yates



Marshall Passman

Michael R. Levy, Esq.



Marshall Passman (Public)

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_____ Paul A. Yates	_____
_____ Marshall Passman	_____
<u>Michael R. Levy</u> Michael R. Levy, Esq.	<u>Industry</u>

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