

## NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Jane Lake Porter, individually and as Trustee  
of the Jane Lake Porter Revocable Trust

and

94-02218

GRF Capital Investors, Inc.,  
Capitol Hedge Partners, Gary R. Fishel,  
Jim A. Turley, Rauscher Pierce Refsnes, Inc.  
and Regional Operations Group

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### **REPRESENTATION OF PARTIES**

Claimants, Jane Lake Porter individually and as Trustee of the Jane Lake Porter Revocable Trust were represented by P. David Newsome, Jr., Esq. of Conner & Winters located in Tulsa, Oklahoma.

Respondents, GRF Capital Investors, Inc., Capitol Hedge Partners, Gary R. Fishel and Jim A. Turley were represented by C. Raymond Patton, Jr., Esq. of Sneed, Lang, Adams & Barnett located in Tulsa, Oklahoma.

### **CASE INFORMATION**

The Statement of Claim was filed on or about June 14, 1994. The Submission Agreement of Claimants, Jane Lake Porter, individually and as Trustee of the Jane Lake Porter Revocable Trust was signed on June 9, 1994.

A Joint Statement of Answer and Counterclaim was filed by Respondents, GRF Capital Investors, Inc., Capitol Hedge Partners, Gary Fishel and Jim A. Turley on or about September 9, 1994. The Submission Agreement of Respondent, GRF Capital Investors, Inc. was signed in September, 1994 by Jim A. Turley, Managing Partner. The Submission Agreement of Respondent, Capitol Hedge Partners was signed in September, 1994 by Jim A. Turley, Managing Partner. The Submission Agreement of Gary Fishel was signed on September 9, 1994. The Submission Agreement of Jim A. Turley was signed in September, 1994.

Claimant's Reply to the Counterclaim of Respondents, GRF Capital Investors, Inc., Capitol Hedge Partners, Gary R. Fishel and Jim A. Turley was filed on or about September 19, 1994.

### **HEARING INFORMATION**

A pre-hearing conference was held on February 21, 1995 in Oklahoma City, Oklahoma before three arbitrators for a total of two (2) hearing sessions.

The hearing was held on May 9, 10, 11 and 24, 1995 in Oklahoma City, Oklahoma for a total of eight (8) hearing sessions.

### **CASE SUMMARY**

Claimants, Jane Lake Porter individually and as Trustee of the Jane Lake Porter Revocable Trust ("Porter") alleged that Respondent, Jim A. Turley ("Turley") breached his fiduciary duty and committed common law fraud by his conduct and actions relating to the Claimants' account. On or about September 29, 1993, Porter opened a trust account at GRF Capital Investors, Inc. ("GRF") with Turley as the Account Executive. Porter claimed that she had no experience in option trading and that Turley was aware of her lack of experience. As alleged, GRF was the introducing broker for the trust account and Rauscher Pierce Refsnes, Inc. ("RPR"), through its affiliate RPR Clearing, was the carrying broker yet the Claimants did not receive a notice of disclosure pursuant to NYSE Rule 382. In connection with opening the account and to convince Porter that investing in options was a low risk strategy, Turley allegedly informed Porter that she was insured against the losses in the trust account and also provided the Claimant with summaries of the results of his options strategies for July, 1992 until July, 1993 which Porter contended did not reflect the actual results. Porter asserted that Turley failed to disclose to her that he (1) was subject of a Notice of Intent to Deny Registration of an Agent issued by the Oklahoma Department of Securities (the "Department") on February 8, 1990, (2) entered into an agreement with the Department whereby he was prohibited from being licensed as an agent in Oklahoma for two years, (3) was prohibited from certain forms of options trading in customer accounts by the Department in 1987, (4) was the subject of an arbitration case filed by a customer alleging unauthorized trading, (5) was censured and suspended from association with any member of the NASD in any capacity for two weeks in 1991-92 for guaranteeing a customer's account against losses and (6) was the subject of other customer complaints for unauthorized and unsuitable trading which were ultimately settled. Porter asserted that Respondents, GRF and Gary R. Fishel ("Fishel"), president of GRF, were negligent since they knew or should have known Turley had a history of disciplinary problems and should have exercised caution and adopted measures to supervise option accounts managed by Turley. Porter further asserted that she did not give Turley written authorization to exercise discretion over the trust account and that Turley bought and sold securities without the prior knowledge or authorization of Porter. In November, 1993, Porter withdrew all of the funds from the trust account with the expectation that any other options trading would be through a partnership Turley was to form. The Claimants contended that 15,174 shares of BancFirst Corporation common stock was delivered to Turley on or about December 16, 1993 for deposit into the trust account. The Claimant further contended that, although Porter instructed Turley to sell the stock, to put the proceeds in a money market account and to not use the money for options trading, Turley sold the stock in two blocks on

January 7 and 11, 1994 for \$71,250.00 and \$143,707.00, respectively then used the proceeds for option trading. Upon the Claimant's requests, Turley allegedly refunded in three different wire transfers the amount of \$117,639.37 to Porter between February, 1994 and April, 1994 yet, notwithstanding the value of the account when it was closed in April, 1994 of \$9,231.28, there was a difference of \$88,086.35 between the refunded amount and the sale proceeds.

After alleged extensive efforts to convince Porter to invest in Respondent, Capital Hedge Partners (the "Partnership") which is a general partnership with Turley as its managing partner, Porter sent \$200,00.00 to Turley on November 2, 1993 to become a partner with the understanding that no more options trading would occur in the trust account and that only \$100,000.00 would be invested on behalf of the Partnership in options at any one time. As alleged, Turley failed to inform Porter of the risks involved in options trading in this Partnership and made material misrepresentations of fact to Porter concerning the Partnership. On April 25, 1994, Porter withdrew from the Partnership but has not yet allegedly received her share of its' assets in accordance with the terms of the Partnership Agreement. Claimants made other specific allegations against the Respondents and assertions of liability including, but, not limited to, violations of the anti-fraud provisions of the Federal securities Laws, violations of Section 408 of the Oklahoma Securities Act, Respondeat Superior and Detrimental Reliance.

Respondents, GRF Capital Investors, Inc., Capitol Hedge Partners, Gary R. Fishel and Jim A. Turley denied the allegations set forth in the Statement of Claim. Respondents specifically stated Jane Lake Porter and her husband, John Pennington Porter served as Co-Trustees of the trust account, that Jane Lake Porter and her husband were intelligent, college-educated, experienced in business and very wealthy and that losses in the account were due to market conditions. The Respondents claimed that a disclosure notice pursuant to NYSE Rule 382 as well as an Options Disclosure booklet were sent to the Claimant. The Respondents further claimed that Turley's trading strategy was reviewed by Fishel and that Turley had discussed this strategy with the Porters on several occasions for approximately twelve hours. Finally, Respondents contended that the Claimant submitted a claim which is frivolous and requested reimbursement under Section 408(i) of the Oklahoma Securities Act.

### **RELIEF REQUESTED**

Claimants, Jane Lake Porter individually and as Trustee of the Jane Lake Porter Revocable Trust requested an award in the amount of approximately \$288,086.00 in actual damages plus interest and costs of arbitration.

Respondents, GRF Capital Investors, Inc., Capital Hedge Partners, Gary R. Fishel and Jim A. Turley requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

At the request of Respondents, Rauscher Pierce Refsnes, Inc. and Regional Operations Group, by and through their counsel William B. Federman, Esq. of Day, Edwards, Federman, Propester, a pre-hearing conference was held on February 21, 1995 so that the arbitrators would entertain their Joint Request for Dismissal under Section 16 of the NASD Code of Arbitration Procedure ("Code"). After hearing oral arguments from the parties during the pre-hearing conference and subsequent to reviewing all relevant submissions, the undersigned arbitrators determined that the Respondents, Rauscher Pierce Refsnes, Inc. and Regional Operations Group's Motion to Dismiss was granted pursuant to Section 16 of the Code. An Order confirming this determination was executed by the undersigned arbitrators and served on the parties by the NASD on or about March 15, 1995.

The parties have agreed that a handwritten, signed Award may be entered. The parties have 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, James A. Turley is hereby liable for and shall pay to the Claimant, Jane Lake Porter, individually, the sum of \$111,034.77;
2. All other claims including a request for punitive damages asserted by Claimant, Jane Lake Porter, individually, against the Respondents are hereby denied in their entirety;
3. Respondents', GRF Capital Investors, Inc., Capitol Hedge Partners, Gary R. Fishel and Jim A. Turley, counterclaim is hereby denied in its' entirety; and
4. All parties shall bear their own respective costs including attorneys fees except for those specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750.00 per hearing session. There were ten (10) hearing sessions x \$750.00 = \$7,500.00 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure ("Code"), the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of

\$750.00 previously deposited with the NASD by the Claimants, Jane Lake Porter, individually and as Trustee of the Jane Lake Porter Revocable Trust. Claimants, Jane Lake Porter individually and as Trustee of the Jane Lake Porter Revocable Trust is hereby, jointly and severally, liable for and shall pay to the NASD additional forum fees in the amount of \$3,000.00. Respondents, GRF Capital Investors, Inc., Capitol Hedge Partners, Gary R. Fishel and Jim Turley are hereby, jointly and severally, liable for and shall pay to the NASD forum fees in the amount of \$3,750.00. Respondent, GRF Capital Investors, Inc. is hereby liable for and shall pay to the NASD the sum of \$200.00 for the member firm surcharge assessed in accordance with Section 45 of the Code. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dennis S. Boxeur, Esq.  
Dennis S. Boxeur, Esq.  
Public Arbitrator, Presiding Chair

John E. Ulrey, Sr.  
John E. Ulrey, Sr.  
Public Arbitrator

William C. Langdon  
William C. Langdon  
Industry Arbitrator

Date served by the NASD: July 11, 1995