

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Mark B. Fink

95-00110

Name of Respondent(s)

Securities America, Inc.

REPRESENTATION

For Claimant Mark D. Fink: F. Robert Slotkin, Esq. of the law firm of Wilson, Strickland & Benson, Atlanta, Georgia.

For Respondent Securities America Inc.: Susan Smith Jones, Esq. of the law firm of Pursley, Howell, Lowery & Meeks, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed: January 9, 1995.

Claimant's Submission Agreement signed on: January 6, 1995.

Statement of Answer filed by Respondent Securities America Inc. on: March 9, 1995.

Respondent Securities America Inc.'s Submission Agreement signed on: March 6, 1995.

HEARING INFORMATION

Hearing Dates/Sessions: January 11, 1996 / 2 Sessions
 January 23, 1996 / 2 Sessions

Hearing Location: NASD offices located in Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that the Respondent's account executive, without the Claimant's knowledge or approval, redeemed all of the Claimant's investment in the Heritage Cash Trust and used the proceeds to purchase shares of the Heritage Capital Appreciation Trust. Claimant next alleged Respondent recommended that the Claimant redeem all shares of Heritage Capital Appreciation Trust in order to purchase a Mutual Fund within the Phoenix group of funds with a purported 20% yield and Claimant agreed and the Respondent redeemed the Claimant's investment in the Heritage Capital Appreciation Trust and the Claimant endorsed the check. Claimant next alleged he thereafter learned that the Respondent never used the funds received to purchase shares in the Phoenix Fund and he never received any shares or other interest in any mutual fund and the Respondent has refused to accept responsibility for funds the Claimant delivered to their Registered Representative. Claimant further alleged the Respondent failed to properly supervise its account executive and Claimant is entitled to punitive damages for the Respondent's wanton and reckless conduct.

Respondent maintained they never received the money and Dr. Mark Fink never opened a Securities America Inc. account, the mutual fund shares were not purchased and Dr. Fink never received or saw any confirmation or documentation of the purchase. Respondent next maintained the Claimant had business and personal ties to the account executive, Homer Foster, as he owned and operated a company that provided financial planning and business advisory services to the Claimant's business, Fink Chiropractic Clinic and Mr. Forster's business was separate from his Securities America Inc. activities and Dr. Fink owned stock in Mr. Forster's company and Mr. Foster was a director and stockholder in Fink Chiropractic Clinic. Respondent next maintained when Mr. Forster became affiliated with Securities America Inc., his U-4 and U-5 indicated no prior felony or misdemeanor charges or regulatory problems. Respondent next maintained to their knowledge, Dr. Fink never applied or signed an application for investment in the Phoenix Fund and the Claimant admittedly received no paperwork or documents at all regarding his alleged prospective purchase and he contacted Securities America Inc. more than three years after he allegedly authorized the purchase of Phoenix Fund shares and after Mr. Forster left the country with the proceeds of illegally redeemed life insurance policies held by a number of his insurance clients. Respondent next maintained that it did not fail reasonably to supervise Mr. Forster in that it had in place a reasonably adequate supervisory system, enforced its system and had no cause to believe its procedures were not being complied with and it acted in good faith and it did not directly or indirectly induce the alleged securities violation. Respondent next maintained the facts of this case do not authorize an award of punitive damages against the Respondent.

RELIEF REQUESTED

Claimant requested damages in the sum of \$25,131.01 plus interest or other reasonable investment return, plus attorney's fees and other costs incurred in bringing this proceeding plus punitive damages in the sum of \$74,000.00.

Respondent requested a denial and dismissal of the Statement of Claim, casting all costs against the Claimant.

AWARD

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

1. The Respondent be and hereby is liable and shall pay to the Claimant the sum of \$25,131.01 pre-judgment interest specifically excluded.
2. The Claimant's request for punitive damages is denied.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

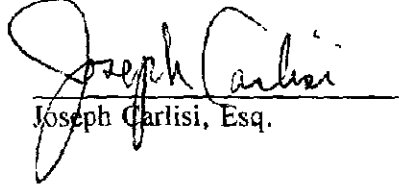
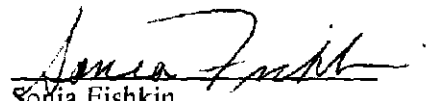
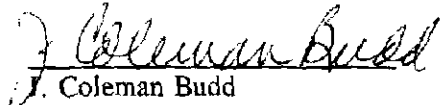
Claim filing fee:	\$150.00
Hearing session fees:	\$500.00 x 4 = \$2,000.00
Total fees:	\$2,150.00

The undersigned arbitrators have determined that the Claimant shall bear one-half of the cost of arbitration and the Respondent shall bear one-half of the cost of arbitration.

1. The Claimant is assessed the sum of \$1,075.00. The Claimant previously paid \$950.00 and owes a balance of \$125.00.
2. The Respondent is assessed the sum of \$1,075.00 representing forum fees and the sum of \$300.00 representing the member surcharge.

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

Concurring Arbitrators' Signatures

Name	Public/Industry
 Joseph Carlisi, Esq.	Public
 Sofia Fishkin	Public
 J. Coleman Budd	Industry

Execution
Date of ~~DECISION~~:

2/19/96

Date of Decision: March 11, 1996

RECIPIENTS:

Joseph Carlisi, Esq.