

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Werner Weingartner

95-00276

Name of Respondent(s)

Fundamental Service Corp.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 17, 1995 Claimant Werner Weingartner, who appeared Pro Se, alleged that Respondent Fundamental Service Corp. should be held liable for losses he has suffered regarding an investment he made in the Fundamental U.S. Government Strategic Income Fund, which he was led to believe held the highest degree of safety, since it was represented to him as a AAA rated security. The Claimant also alleged that he later discovered the Fund was using very risky investment procedures, causing a loss to him for which the Respondent should be held liable.

Respondent Fundamental Service Corp., through its representative and outside counsel, Ronald S. Greenberg, Kramer, Levin, Naftalis, Nessen, Kamin & Frankel, New York, NY, maintained that the Claimant has sought arbitration against the wrong party, since Fundamental Service Corp. merely distributes certain fund sales literature, and Claimant sent no money to them for the investment. The Respondent also maintained that the Fund's transfer agent, Fundamental Shareholder Services, Inc. is where actual purchases are made from, as indicated on the account application. Respondent Fundamental Service Corp. contended that the Claimant's claim should be dismissed because Claimant cannot state any valid claim against Fundamental Service Corp., an entity with which he has no relationship and has made no allegations of wrongdoing against, and further, the entity which Claimant Weingartner claims misled him is not a member of the NASD and cannot be compelled to NASD Arbitration. The Respondent also contended that any loss in value of the Claimant's investment was due to market risks that were fully and repeatedly disclosed in the Prospectus, which Claimant received and represented he read. Respondent Fundamental Service Corp. maintained that it committed no wrongdoing, that Claimant has pursued this action improperly, and that his claim should be denied.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator considered Respondent's reassertion that it is an improper party to this action. The Arbitrator denied the Respondent's request for dismissal as an improper party.

RELIEF REQUESTED

Claimant Werner Weingartner requested \$9,000.00 in actual damages.

Respondent Fundamental Service Corp. requested that the claims of the Claimant be dismissed.

AWARD

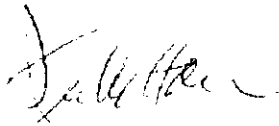
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Ira M. Starr, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 9, 1995 but not signed by the Respondent as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Fundamental Service Corp. is liable and shall pay to the Claimant, Werner Weingartner, \$2,700.00 in actual damages.
2. Respondent Fundamental Service Corp. is liable and shall pay to the Claimant, Werner Weingartner, simple interest at the rate of 8.5% per annum from the date of this award until the date of payment of the award.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Fundamental Service Corp. is liable and shall pay to the Claimant, Werner Weingartner, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **Ira M. Starr, Esq.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read "Ira M. Starr", is written above a horizontal line.

Ira M. Starr

DATE OF DECISION: Januaru 18, 1996