

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

David McFarland and Patty McFarland

95-00519

Name of Respondents

Eric R. Benke
Continental Broker-Dealer Corp

REPRESENTATION

For Claimant David and Patty McFarland ("claimants") appeared Michael D. Freeman, Esq. of Balch & Bingham located in Birmingham, Alabama.

For Respondents Continental Broker-Dealer Corporation ("Continental") and Eric R. Benke ("Benke") (collectively "respondents") appeared Steven F. Wasserman, Esq. of Bernstein & Wasserman of New York, NY.

CASE INFORMATION

The Statement of Claim was filed on January 31, 1995. Claimant's Submission Agreement was signed on December 13, 1994.

A joint Statement of Answer was filed by Respondents on March 30, 1995. Respondent Benke's Submission Agreement was signed on April 20, 1995. Respondent Continental's Submission Agreement was signed on April 20, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	February 28, 1996	1 Session
Hearing Dates/Sessions:	November 12, 1996	2 Sessions
	November 13, 1996	2 Sessions
	December 20, 1996	2 Sessions

CASE SUMMARY

Claimants contended that Benke solicited them to open an account with Continental and that they informed Benke they wanted to invest conservatively, to purchase stocks which were fundamentally sound and were not susceptible to wide price fluctuations. Claimants further contended that they told Benke they had \$300,000 net worth, \$100,000 annual income and liquid cash of \$30,000.

According to claimants, soon after the account was opened, Benke began encouraging claimants to invest a small percentage in short term trades in more volatile securities and that he had been profitable in similar trades. Claimants stated that Benke offered not take commission on unprofitable trades and a small commission on profitable trades.

Claimants argued that Benke telephoned them in August 1994 and urged them to purchase 20,000 shares of Actava Group, Inc. for \$278,000. Claimants further argued that Benke, during the call, told them that a meeting was planned to finalize merger plans between Actava, Metromedia and Orion Pictures. Claimants insisted that Benke down played the risk by assuring them they would be in and out in one day.

Although claimants contended they initially refused to make the purchase, they relented to Benke's alleged high pressure technique and purchased 20,000 shares. During the day trading was suspended and when trading resumed, the price had dropped substantially. Continental and Oppenheimer, the clearing agent, demanded a margin payment of \$130,000.

Claimant maintained that when the settlement date arrived they instructed Benke to liquidate the account even though Benke had recommended they sell one-half the Actava and all other securities to meet margin and hold the other one-half of Actava.

Respondents stated that upon review of the statement of claim they were unable to discern any evidence of misconduct or impropriety. Respondents maintained that on or about July 14, 1994 claimant opened an account with Continental's Carle Place office and Benke for which they had to provide personal and financial data including annual income and net worth, \$100,000 and \$300,000 respectively. In addition respondents maintained that claimants indicated their investment objectives were business risk appreciation and speculation. Therefore, respondents concluded that equities investments and long term growth situations were suitable for claimants.

Respondents alleged they presented several investments to claimants, some of which claimants purchased and received written confirmations. According to Continental, each of Benke's presentations conformed to their procedures which require a fair and balanced presentation of the investment's merits and risks. Respondents denied all allegations and specifically denied the allegations of misrepresentation and failure to execute based on the following affirmative defenses: failure to state a cause of action, estoppel, waiver, laches, ratification, failure to mitigate, assumption of risk, culpable conduct by claimants, Article III, Section 27, statute of limitations, barred by statute and judicial opinion, unclean hands and request for relief is barred by Section 25(a) of the NASD Code of Arbitration Procedure.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$58,870.00, punitive damages of not less than \$100,000.00, attorney's fees, interest, and the costs of this arbitration. They also requested such other, further or different relief as the arbitrators may deem just and proper.

Respondents Continental and Benke requested the Statement of Claim be dismissed in its entirety and that they be awarded such other relief, including reimbursement of their costs and counsel fees incurred, as may be deemed just, proper and equitable under the circumstances.

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 originals remain on file with the NASD.

AWARD

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

1. Respondents Continental Broker-Dealer Corporation and Eric Benke be and hereby are liable to Claimants David and Patty McFarland in the amount of \$48,255.00 in compensatory damages.
2. Respondents Continental Broker-Dealer Corporation and Eric Benke be and hereby are liable to Claimants David and Patty McFarland for interest at 6% per annum from September 12, 1994 to the final hearing date in the amount of \$6,514.43.
3. Respondents Continental Broker-Dealer Corporation and Eric Benke be and hereby are liable to Claimants David and Patty McFarland in the amount of \$20,000.00 which represents attorney's fees pursuant to Ala. Code sec. 8-6-19.

FORUM FEES

Pursuant to Rule 10332 (formerly Section 43c) of the Code of Arbitration Procedure, the panel has determined that the NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee submitted by claimants and have assessed the following forum fees:

1 Pre-hearing conference x \$300.00	=	\$ 300.00
6 Hearing Sessions x \$750.00	=	\$4,500.00
Total forum fee	=	\$4,800.00
Less claimants' hearing session deposit	=	\$ 750.00
Total outstanding		\$4,050.00

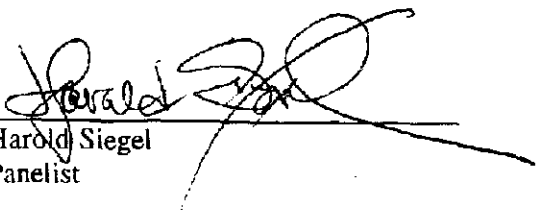
The panel has determined to assess the entire cost of the arbitration jointly and severally against the Respondents Continental Broker-Dealer and Eric Benke. Therefore respondents are jointly and severally liable to and shall pay the NASD Regulation, Inc. the sum of \$4,050.00 which represents the outstanding forum fees. Respondents are jointly and severally liable to and shall reimburse claimants in the amount of \$750.00 which represents the hearing session deposit previously submitted by them to the NASD Regulation, Inc.

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

Joseph Carlisi, Esq.
Public Chairman

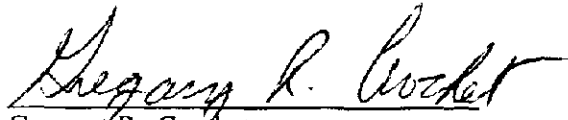
Gregory R. Crochet
Panelist



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