

## **NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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**In the Matter of the Arbitration Between**

**Clark C. Dedrick and Eva Dedrick**

**Claimant(s)**

**NASD Arbitration**

**v.**

**No. 95-00652**

**Joseph D. Fuccy**

**Advisory Financial Consultants**

**Respondent(s)**

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### **REPRESENTATION OF PARTIES**

**Clark C. Dedrick and Eva Dedrick ("Claimants") were represented by Richard Sacks, Investors Recovery Service, Novato, California**

**Joseph D. Fuccy ("Respondent") was represented by Douglas B. Martin, Jr., Esq., San Francisco, California**

**Advisory Financial Consultants ("Respondent") was represented by Douglas B. Martin, Jr., Esq., San Francisco, California**

### **CASE INFORMATION**

**Claimant's Statement of Claim was filed on or about February 7, 1995. Claimant's Submission Agreement was signed on February 1, 1995.**

**Respondents Joseph D. Fuccy and Advisory Financial Consultants Joint Statement of Answer was filed on or about April 17, 1995. The Submission Agreement for Joseph D. Fuccy was signed on April 12, 1995. The Submission Agreement for Advisory Financial Consultants was signed on April 12, 1995.**

### **HEARING INFORMATION**

**A pre-hearing conference was held on March 18, 1996. 1 Session.**

**The hearing was held on March 19, 1996 in San Francisco, California for a total of sessions.**

### **CASE SUMMARY**

Claimants alleged that the Respondents solicited the sale of an two investments, AIG Life Tax Deferred Annuity and Commonwealth Equity Trust(CET). Claimants alleged that CET was an unsuitable investment with a high commission charge. Claimants further alleged that the Respondents fraudulently and negligently failed to truthfully disclose the speculative nature of the investment and subsequently concealed the performance of the investment.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically argued that the Claimants had been given an Offering Circular which described all the material facts of CET including the commission charge. which they reviewed prior to making the investment in CET. Respondents further argued that CET was a low risk investment at the time it was presented and subsequently purchased by the Claimants. Additionally, the Respondents argued that the Claimants were aware of the performance of CET through regular reports supplied by CET.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$40,000, plus interest and costs. Claimant also requested that punitive damages be awarded.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded costs. Respondents also requested that Investors Recovery Service and Richard Sacks be sanctioned for filing a frivolous claim.

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

After reviewing the pleadings and all documentation submitted by the parties and listening to oral argument the panel confirmed the Director's Decision on the Section 15 Motion to Dismiss.

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. Each and every claim of the Claimants is dismissed;
2. Each party shall bear their respective attorney's fees;

3. Each party shall bear their respective costs.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were 4 sessions x \$400 = \$1,600 plus 1 pre-hearing session x \$300 = \$300 for a total of \$1,900 forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), 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 § 43(c) of the Code of Arbitration Procedure, the parties shall divide the forum fees 50%-50%, with the claimant bearing 50%, and the respondent jointly and severally bearing 50%.

#### **Total Fees**

4 Hearing Sessions @ \$400.00 =	\$1,600.00
1 Pre-hearing Session @\$300.00 =	<u>\$ 300.00</u>
<b>Total</b>	<b>\$1,900.00</b>

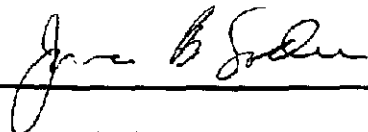
Claimant's 1/2 share	\$ 950.00
Claimant's credit for deposit	<u>\$ 400.00</u>
Claimant's balance	<b>\$ 550.00</b>

Respondent's 1/2 share	<u>\$ 950.00</u>
Respondent's Balance	<b>\$ 950.00</b>

Pursuant to §43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant Clark C. Dedrick and Eva Dedrick.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 due by Respondent Advisory Financial Consultants.

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

  
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Jane B. Soden, Esq.  
Public Arbitrator, Presiding Chair

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Arthur E. Pufford  
Public Arbitrator

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Wilford W. Nelson  
Industry Arbitrator

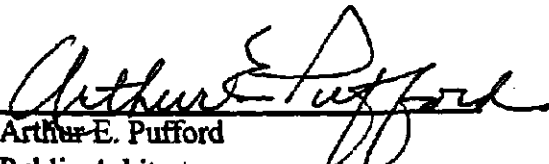
Date served: 4/2/96

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Jane B. Soden, Esq.  
Public Arbitrator, Presiding Chair

  
Arthur E. Pufford  
Public Arbitrator

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March 29, 1996

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Wilford W. Nelson  
Industry Arbitrator

Date served: 4/2/96


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Jane B. Soden, Esq.  
Public Arbitrator, Presiding Chair

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Arthur E. Pufford  
Public Arbitrator

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Wilford W. Nelson  
Industry Arbitrator

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Date served: 4/2/96