

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Glynn James  
Eddie James  
Doug James  
Elizabeth K. James  
Kathy James  
Robert W. James  
Robert W. James, Jr.  
Sylvia James  
Calvin Ray Keel  
James H. Keel

95-01194

Name of Respondents

Greenway Capital Corporation  
Stacey Lee Davis

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REPRESENTATION

Claimant Glynn James, Eddie James, Doug James, Elizabeth K. James, Kathy James, Robert W. James, Robert W. James, Jr., Sylvia James, Calvin Ray Keel, James H. Keel (referred herein as "Claimants") were represented by Nicholas D. Thomas, Attorney at Law, Raleigh, NC.

Respondent Greenway Capital Corporation ("Greenway") was represented by Ruthann G. Niosi, Attorney at Law, New York, NY.

Respondent Stacey Lee Davis ("Davis") appeared pro se.

CASE INFORMATION

Statement of Claim filed by Claimants: March 8, 1995  
Glynn James' Submission Agreement signed on: March 1, 1995  
Eddie James' Submission Agreement signed on: March 2, 1995  
Doug James' Submission Agreement signed on: March 1, 1995  
Elizabeth K. James' Submission Agreement signed on: February 28, 1995  
Kathy James' Submission Agreement signed on: February 28, 1995  
Robert W. James' Submission Agreement signed on: February 28, 1995  
Robert W. James, Jr.'s Submission Agreement signed on: February 28, 1995  
Sylvia James' Submission Agreement signed on: March 2, 1995  
Calvin Ray Keel's Submission Agreement signed on: February 28, 1995  
James H. Keel's Submission Agreement signed on: February 28, 1995

Statement of Answer filed by Greenway on: November 15, 1995

Greenway did not file a submission agreement.

Statement of Answer filed by Davis on: December 18, 1995  
Davis did not file a submission agreement.

#### HEARING INFORMATION

Preliminary Hearing with Full Panel: November 27, 1995 - one session

Hearing Dates/Sessions:

January 25, 1996 - two sessions

January 26, 1996 - two sessions

Hearing Location: Radisson Plaza, Raleigh, NC

#### CASE SUMMARY

Claimants alleged, among other things, that they all placed their trust and confidence in the investment advice and representations of Davis. Claimants alleged that Davis made material misrepresentations regarding the Keith Group of Companies, Inc. ("The Keith Group") and that based on these misrepresentations the Claimants invested in The Keith Group. Claimants specifically alleged that Davis represented that The Keith Group's fourth quarter earnings for 1992 were going to be equal to or greater than the positive earnings for the first three quarters of 1992 and that when the fourth quarter earnings were announced that the price of The Keith Group stock would rise. Claimants alleged that Davis told Claimant James Keel that he, Davis, projected that The Keith Group stock would be worth \$7 or \$8 dollars a share and that the company was in great financial shape. Claimants alleged that when the fourth quarter earning for the Keith Group were finally issued on April 1, 1993, the report was entirely different than was promised by Davis and the share price of The Keith Group dropped dramatically. Claimants alleged that Davis failed to disclose that a \$25 million dollar lawsuit had been pending between the Keith Group and The Bank of Tokyo. Claimants alleged that the actions of Davis amounted to fraud and that Davis violated the anti-fraud provisions of the North Carolina Securities Act and the North Carolina Investment Advisers Act. Claimants also alleged common law fraud, breach of fiduciary duty, negligence and gross negligence, violations of the federal securities laws. Claimants alleged that Greenway is liable under the doctrine of respondeat superior. Claimants alleged that Greenway failed to properly supervise Davis or the Claimants' accounts.

Respondents categorically denied all allegations of wrongdoing asserted by Claimants. Respondents maintained that all relevant information regarding The Keith Group was provided to Claimants. Respondent Davis maintained that he did not commit a fraud nor was he negligent in the handling of Claimants' accounts. Davis

maintained that he had no information (private or public) that would have changed any previous beliefs in the recommendations of The Keith Group. Davis maintained that he was unaware that The Keith Group's financial shape was in danger. Davis maintained that he had no reason to believe that the earnings of The Keith Group would be any different than what was projected. Davis maintained that he never made any guarantees or promises to Claimants. Davis maintained that the law suit between The Keith Group and The Bank of Tokyo was not the reason for the decline in The Keith Group's stock. Davis maintained that the law suit between The Keith Group and The Bank of Tokyo had been disclosed to Claimants prior to the initial purchase of The Keith Group in the quarterly and annual reports issued in 1991 and 1992. Respondents denied that Davis made any material misstatements or omissions, that Davis committed either fraud or negligence, that Davis violated any state or federal securities statutes. Davis maintained that all investments were suitable to Claimants and met their investment objectives. Respondent Greenway maintained, among other things, that Greenway New York is a registered broker dealer, but that there is a distinction between it and Greenway Atlanta and that any adverse actions of Greenway Atlanta and its employees cannot be imputed to Greenway New York. Greenway asserted that any allegations against Greenway New York fail as a matter of law.

#### RELIEF REQUESTED

Claimants requested actual damages in the amount of \$95,000; punitive damages in an amount in excess of \$100,001 and less than \$500,000.

Davis requested that Claimants' claim be dismissed, however, if the panel should find against Davis, than the award be burdened by Greenway New York and that the cost of the hearings not be assessed against Davis.

Greenway requested that as there being no basis for any allegations against Greenway New York, it requests that the claims against it be dismissed in its entirety; that should the panel find against any of the Respondents, the Award be specifically apportioned among the Respondents; and, that the costs of the hearing not be held against Respondent Greenway New York.

#### 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.

Respondents Greenway and Davis did not execute submission agreements. Pursuant to Section 12 of the Code of Arbitration

Procedure, Respondents are required to submit to arbitration. Notwithstanding the Respondents failure to file submission agreements, the Panel exercised its jurisdiction over the Respondents. Prior to the hearing scheduled for January 25, 1996, Claimants reached a settlement with Respondent Greenway. Claimants pursued their claim in arbitration against the remaining Respondent Stacey Lee Davis.

#### 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. That Claimants' claim against Respondent Stacey Lee Davis is denied in its entirety.
2. Claimants' claim for punitive damages is denied in its entirety.
3. That the parties shall bear their respective costs, including attorney's fees except as specifically stated herein.

#### FORUM FEES

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

5 hearings sessions x \$750 = \$3,750 minus \$750 in hearing session fees deposited by Claimants = \$3,000 balance due to the NASD

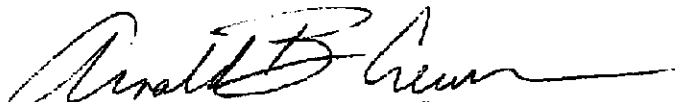
Forum Fees Assessed Against: Forum fees for the preliminary hearing that was conducted on November 27, 1996 are assessed against Respondent Greenway in the amount of \$750.

Forum fees for the remaining four hearing sessions are assessed against Respondent Davis so that Davis shall pay hearing session fees in the amount of \$2,250 to the NASD and the Panel directs that Davis reimburse Claimants their initial hearing session deposit of \$750 and that Davis reimburse Claimants their non refundable claim filing fee of \$200.

DATE

CONCURRING ARBITRATORS' SIGNATURES

3/12/96



Arnald B. Crews, Chairperson  
Public Arbitrator

\_\_\_\_\_  
George Szontagh, Panelist  
Public Arbitrator

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Daniel W. Desmond, Panelist  
Industry Arbitrator

Date Award served by the NASD:

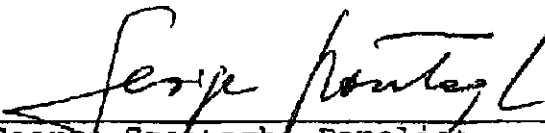
March 14, 1996

DATE

CONCURRING ARBITRATORS' SIGNATURES

3.12.1996

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Public Arbitrator

  
George Szontagh, Panelist  
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Industry Arbitrator

Date Award served by the NASD: March 14, 1996