

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

David Zaslow for Tillie E. Zaslow

95-01644

Name of Respondents

Drake Capital Securities, Inc.
Frank J. Niezgoda

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 4, 1995, Claimant David Zaslow, ("Claimant") under a power of attorney for Tillie Zaslow ("T. Zaslow") and who appeared Pro Se, alleged that Respondent Drake Capital Securities, Inc. ("Drake"), through its broker, Robert Feldman ("Feldman"), sold T. Zaslow, \$90,504.96 worth of American Capital US Government Trust Fund on February 18, 1994. Claimant further alleged that Feldman misrepresented the fund's safety, liquidity, fluctuation and rate of return to T. Zaslow. Claimant contended that when he attempted to contact Feldman in April, 1994 regarding the fund's loss in value, Respondent Drake was negligent because they told Claimant that Feldman had left the firm, but not that Feldman was "censured and barred", which prevented the Zaslows from immediately closing the disputed account. Claimant further contended that other brokers from Respondent Drake were irresponsible, fraudulent, and non-responsive in their handling of the disputed account. Claimant alleged that he reiterates the claims contained in the above claim. Claimant contended that as a CPA, he is not trained to be an advisor regarding different funds. Claimant further contended that he was not assisting T. Zaslow in reference to investment decisions, except for recommending Certificates of Deposit.

Respondent Drake Capital Securities, Inc., through its representative and counsel, Thomas Fehn, maintained that T. Zaslow, with the assistance Claimant, purchased \$90,504.96 worth of American Capital Fund on February 18, 1994. Respondent further alleged that Claimant David Zaslow had purchased for his own account the same fund in November, 1993. Respondent contended that shortly after February 18, 1994, Feldman, the broker for both Zaslows, left the employer of Drake. Respondent further contended that at this time the value of the disputed fund declined due to serious disturbances in the bond market. Respondent alleged that on November 15, 1994, Claimant moved both his and his mother's investment out at the disputed fund into a money market fund. Respondent further alleged that still later Claimant requested that his mother's account be liquidated. Respondent contended that the recommended investment was suitable for Tillie Zaslow because compared to CDs, the disputed fund

offered a higher yield and immediate liquidity, though it had the possibility of fluctuating. Respondent further contended that all the factors associated with the proposed investment were explained to T. Zaslow and understood by the Claimant. Respondent alleged that Respondent Niezgoda can have no liability if this is an unsuitability claim. Respondent further alleged that Claimant participated in the investment decision with T. Zaslow and, though he knew in April, 1994 that the fund's value had decreased, did not counsel T. Zaslow to liquidate her account until nine months later. Respondent contended that as a result of the above, it should not be held liable.

Respondent Frank J. Niezgoda, who appeared Pro Se, maintained that he reiterates the points contained in Respondent Drake's Answer to the Claim. Respondent further maintained that broker Feldman received disciplinary action from NYSE subsequent to leaving Drake for an infraction that took place at Feldman's employer previous to Drake, Oppenheimer & Co. Respondent contended that he has no obligation to inform clients about disciplinary actions their broker incurs, and no obligation to offer to such clients the recession of transactions irrelevant to the cause of such disciplinary actions. Respondent further contended that as a result of the above, he should not be held liable.

RELIEF REQUESTED

Claimant David Zaslow, requested \$9,403.96 in actual damages.

Respondent Drake Capital Securities, Inc., requested that the claims of the Claimant be dismissed in their entirety.

Respondent Frank J. Niezgoda, requested that the claims of the Claimant be dismissed in their entirety.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Alan Stamm, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant David Zaslow, on March 30, 1995, and by the Respondent Drake Capital Securities, Inc., on July 19, 1995, and by Respondent Frank J. Niezgoda, on September 8, 1995.

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. The claims of the Claimant David Zaslow, against Respondent Frank J. Niezgoda, are denied in their entirety.
2. The Respondent Drake Capital Securities, Inc., is liable and shall pay to the Claimant David Zaslow, \$9,403.96 in actual damages.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant David Zaslow, shall be retained by the NASD, Inc.
4. All other relief requests are denied.

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AFFIRMATION

I, ALAN STAMM, 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 dark ink, appearing to be 'Alan Stamm', is written over a horizontal line.

Alan Stamm, Esq.

DATE OF DECISION: February 21, 1996