

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

13/17

Name of Claimant

John Morrell

95-03223

Name of Respondents

Thomas Hauke
Robert Hill

REPRESENTATION

For Claimant John Morrell, IRA ("Claimant"), appeared Frank Anselmo, Esq., a solo practitioner located in Darien, Connecticut.

Respondent Thomas Hauke ("Hauke") did not appear at the hearing on the merits.

Respondent Robert Hill ("Hill") did not appear at the hearing on the merits.

CASE INFORMATION

Statement of Claim filed on: July 5, 1995.

Claimant's Submission Agreement signed on: July 27, 1995.

Statement of Answer filed by Respondent Hauke on: October 9, 1995.

Respondent Hauke's Submission Agreement signed on: October 9, 1995.

Statement of Answer filed by Respondent Hill on: October 20, 1995.

Respondent Hill's Submission Agreement signed on: October 11, 1995.

HEARING INFORMATION

Pre-Hearing Conference: October 30, 1996 - One Session

Hearing Dates/Sessions: August 11, 1997 - One Session

The pre-hearing conference was held telephonically. The hearing was held at the offices of NASD Regulation, Inc. located at 125 Broad St., New York, New York.

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CASE SUMMARY

Claimant alleged that in April 1994, he invested \$35,000.00 for 0.70% of Argent Capital Group, Inc. ("Argent"), with the option to buy an additional 0.55% for \$20,000.00. Claimant maintained that the investment was represented as an appropriate IRA investment with a 50% rate of return. Claimant also asserted that on April 28, 1994, he met with Respondents and informed him that he had not received the formal offer sheet with respect to the purchase of Argent stock. Claimant asserted that Respondents presented a copy of the offering and assured him that this was a solid investment. Claimant further asserted that he signed the document in order to meet the closing date claims asserted by Respondents.

Claimant contended that he maintained communications with Argent concerning the progress status of the offerings and that in June 1995, he was told that "all was well." However, in July and August of 1995, Claimant stated that Respondents informed him that Argent was under funded and would be sold to JLR Associates and that he would have to agree to the sale. Claimant also maintained that he informed Respondents that he had been defrauded and that he would seek legal advice. According to Claimant, Respondents stated that if he did not agree to the sale that there would be no recovery. Ultimately, the parties entered into a Purchase and Sale Agreement in which Respondent Hauke agreed to pay \$1,165.00 per month for 24 months, beginning February 25, 1995. Claimant contended that Respondent Hauke defaulted on the note, misrepresented the suitability of the private placement as an IRA investment as well as misrepresented the capitalization and fundamental assets, solvency and strength of the company.

Respondent Hauke maintained that Claimant violated the sales agreement in that any disputes arising under the agreement should have been heard in the State Court of Connecticut. Respondent alleged that a promissory note was executed between Claimant and Respondent Hill in the amount of \$25,000.00 and that he executed the note through his Professional Association (PA) in addition to personally guaranteeing the loan. Respondent Hauke also indicated that Claimant was to be repaid with fees generated by the PA, but when the repayment period approached Claimant orally agreed to a 9 to 12 month delay in that the PA was not "on solid footing."

Respondent Hauke maintained that Claimant's signature on the note was prima facie evidence that no fraud was involved in the Purchase or Sale of Argent Stock. Respondent Hauke also maintained that Claimant conspired with Peter Fulton ("Mr. Fulton"), a Registered Representative and broker for Argent, to support Claimant's position. In addition, Respondent Hauke maintained that Mr. Fulton provided Claimant with information on Argent throughout the negotiations to buy back Claimant's shares. Furthermore, Respondent Hauke alleged that Claimant, through Mr. Fulton, had invested significant money in speculative issues and, therefore, knew the risk associated with this type of investment. Respondent Hauke also noted that Claimant signed an investor suitability questionnaire in which he asserted that his net worth was in excess of \$1,000,000.00 and that his individual income was greater than \$200,000.00 in each of the two most recent years and expected his income to remain the same.

Respondent Hill maintained that he had no personal involvement in any transaction at issue. Respondent Hill further maintained that he was an employee, not a principal of Argent, with no ownership interest. Respondent Hill maintained that he had no involvement in the offer or sale of Argent to Claimant and was not a signatory to the Asset Purchase Agreement nor the promissory note between Claimant and Respondent Hauke. Respondent Hill maintained that Claimant knowingly entered into and authorized each and every transaction. Respondent Hill further maintained Claimant was suitable for the investment and had significant financial means to bear the losses which he incurred. Respondent Hill maintained that Claimant improperly seeks to shift responsibility for his monetary losses to Respondent.

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RELIEF REQUESTED

Claimant requested the amount of his original investment, \$35,000.00 plus interest. Claimant also requested an unspecified amount of punitive damages.

Respondent Hauke requested that claimant's claim be dismissed in its entirety.

Respondent Hill requested that he be dismissed from the arbitration, and that claimant's claim be dismissed with prejudice, and that he be awarded costs, expenses, and attorney's fees.

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 original(s) remain on file with the NASD.

The arbitration panel made the following rulings concerning respondents Hauke and Hill who failed to appear at the evidentiary hearings conducted in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondents Hauke and Hill were persons associated with the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Respondents Hauke and Hill pursuant to Rule 10301(a) of the Code.
3. In accordance with Rules 10310 10315 and 10318 of the Code, the panel found that NASD Regulation provided Respondents Hauke and Hill with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel therefore, determined to proceed with the hearing without Respondents Hauke and Hill, whose absence was unexcused.

Claimant withdrew Respondent Argent Capital Group, Inc. from these proceeding in a letter dated September 22, 1995.

AWARD

1. The Respondents Thomas Hauke and Robert Hill are jointly and severally liable and shall pay to the Claimant John Morrell \$57,000.00 in actual damages.
2. The Respondents Thomas Hauke and Robert Hill are jointly and severally liable and shall pay to the Claimant John Morrell \$3,500.00 in Attorney's fees.
3. The Respondents Thomas Hauke and Robert Hill are jointly and severally liable and shall pay to the Claimant John Morrell simple interest of 5% in post judgment interest from the date of the award through date of payment.
4. All other relief requests are denied.

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FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$120.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following Forum Fees:

1 Pre-hearing session x \$300.00=	\$300.00
1 Pre-hearing session x \$400.00=	\$400.00
Minus Claimants' hearing deposit=	<u>\$400.00</u>
Total Outstanding =	\$300.00

- 1) Respondents Thomas Hauke and Robert Hill be and hereby are jointly and severally liable for the sum of \$700.00 representing the full amount of Forum Fees assessed.
- 2) Respondents Thomas Hauke and Robert Hill shall pay to the Claimant John Morrell \$400.00 as reimbursement of the hearing session deposit.
- 3) Respondents Hauke and Hill shall pay to NASD Regulation, Inc., the sum of \$300.00 for the outstanding forum fees.
- 4) Respondents are required to reimburse claimants' \$120.00 filing fee.
- 5) A member surcharge of \$200.00 has been assessed against Argent Capital Group, Inc.

Fees are payable to the NASD Regulation, Inc..

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ARBITRATORS' SIGNATURES

I, Sheldon M. Finkelstein, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Sheldon M. Finkelstein, Esq.
Public Chairperson

Date of Decision: October 28, 1997

I, Edward M. Miller, Ph.D, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Edward M. Miller, Ph.D
Public Panelist

I, James R. Madan, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

James R. Madan
Industry Panelist

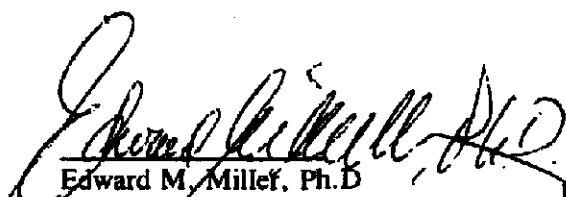
ARBITRATORS' SIGNATURES

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I, Sheldon M. Finkelstein, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Sheldon M. Finkelstein, Esq.
Public Chairperson

I, Edward M. Miller, Ph.D, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Edward M. Miller, Ph.D
Public Panelist

Date of Decision: October 28, 1997

I, James R. Madan, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

James R. Madan
Industry Panelist

27/10/97

ARBITRATORS' SIGNATURES

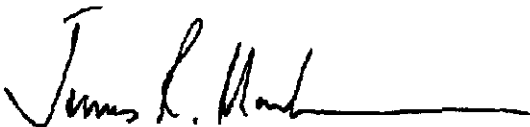
I, Sheldon M. Finkelstein, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Sheldon M. Finkelstein, Esq.
Public Chairperson

I, Edward M. Miller, Ph.D, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Edward M. Miller, Ph.D
Public Panelist

I, James R. Madan, do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Date of Decision: October 28, 1997

James R. Madan
Industry Panelist