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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jeri Schneider

95-04451

Name of Respondents

\*Greenway Capital Corp.  
Mark Moore

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**REPRESENTATION**

For Claimant Jeri Schneider ("claimant") appeared Scott Hilsen, Esq. of the law firm Robins, Kaplan, Miller and Ciresi located in Atlanta, Georgia.

For Respondent Greenway Capital Corp. ("Greenway") appeared Ruth AM G. Niosi, Esq., a sole practitioner located in New York, New York.

For Respondent Mark Moore ("Moore") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: September 19, 1995.

Claimant's Submission Agreement signed on: August 31, 1995.

Respondent Greenway's Statement of Answer was filed on: December 1, 1995.

Respondent Greenway's Submission Agreement was signed on: December 19, 1995.

Respondent Moore's Statement of Answer was filed on: May 9, 1996.

Respondent Moore's Submission Agreement was signed on: May 7, 1996.

**HEARING INFORMATION**

Pre-Hearing Session:

April 24, 1996

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1 Session

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Hearing Dates/sessions:	May 29, 1996	-	2 Sessions
	May 30, 1996	-	2 Sessions

The hearings were held at the NASD offices located in Atlanta, GA.

### CASE SUMMARY

Claimant alleged that she and her husband had several investment accounts with **Greenway** and Mark Moore, one of which was a joint account, number 321281 (the "Account"). Claimant alleged that on October 7, 1993 her husband passed away leaving her with life insurance proceeds in the amount of \$99,000.00. Claimant alleged that in November of 1993 she met with Respondent Mark Moore and told him that she had no investment experience and did not know how to proceed with the accounts.

Claimant contended that a second meeting took place between her and Mark Moore a month later at which time she gave Mark Moore \$80,000.00 of the life insurance proceeds. Claimant alleged that she told Mr. Moore she was risk adverse and did not want the funds to be subject to any risk as she desired to provide for her children's education. Claimant further alleged she informed Mr. Moore that she sought an account geared toward long-term gain as opposed to short-term profit and that Mr. Moore understood completely claimant's circumstances and concerns.

Claimant alleged that Mr. Moore disregarded her stated investment goals for the Account and retained and acquired holdings in higher risk securities which were unsuitable for her financial status. Claimant further alleged that Respondent **Greenway** failed to properly supervise Mr. Moore's trading activities. Claimant contended that as a result of the unsuitable investments, she sustained realized and unrealized direct losses of approximately \$49,525.00.

Claimant alleged that Respondent Mark Moore and Respondent **Greenway** violated Section 12(2) of the 1933 Act, Section 10(b) of the 1934 Act and Rule 10b-5, and Section 12(a)(2) of the Georgia Securities Act. Claimant further alleged that the respondents breached their fiduciary and contractual duties, committed actual or constructive fraud, and were negligent in carrying out their obligations. Additionally, claimant alleged that respondents violated Sections 1, 2, and 27 of the NASD Rules of Fair Practice. Claimant contended that Respondent **Greenway** could be held liable under Section 20 of the 1934 Act as a "controlling person" and also under the common law theory of respondeat superior.

Respondent Mark Moore maintained that he invested in stocks listed on the New York Stock Exchange and NASDAQ in accordance with the investment goals of Ms. Schneider. Respondent maintained that all transactions were discussed with Ms. Schneider prior to execution and were only executed if she approved. Accordingly, respondent maintained that all investments between January 1994 and April 1995 were agreed upon by MS Schneider.

Respondent Mark Moore also maintained that he never made any untrue statement and that the information which he relied upon in choosing investments for Ms. Schneider was firmly rooted. Respondent maintained that though the account did not perform as well as he would have liked, he did not violate his duties since the investments were all suitable for the Account.

Respondent **Greenway** Capital Corporation of New York denied all the material allegations against it. Respondent maintained that Mark Moore was a broker for **Greenway** Atlanta which had a separate jurisdiction as a "franchise OSJ" (OSJ is the industry notation for office of supervisory jurisdiction).

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Respondent maintained that, since it was not the employer of Mark Moore and that others owned the Greenway Atlanta franchise, it had no knowledge of the information asserted by the claimant and should not be held liable.

#### **RELIEF REQUESTED**

Claimant requested entry of an award in her favor against the respondents Greenway Capital Corp. and Mark Moore jointly and severally:

1. in the amount of \$70,000.00 for compensatory damages plus commission charges in an amount proved at arbitration, and prejudgment interest;
2. for punitive damages and exemplary damages, in a sum sufficient to punish said respondents and to deter future violations by others similarly situated;
3. for attorney's fees and the costs of the action;
4. for other and further relief as is just and proper under the circumstances.

Respondent Greenway Capital Corporation requested:

1. that the claims as against them be dismissed in their entirety; and
2. that the costs of the hearing not be held against it.

Respondent Mark Moore requested:

1. that the Statement of Claim be dismissed in its entirety.

#### **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.

#### **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 Greenway Capital Corp and Mark Moore be and hereby are jointly and severally liable and shall pay to the Claimant the sum of \$31,058.00 in compensatory damages.

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- '2. Respondent **Greenway Capital Corporation** be and hereby is liable and shall pay Claimant the sum of **\$100,000.00** in punitive damages pursuant to Mastrobuono v. Shearson Lehman Hutton, Inc. 115 S. Ct. 1212 (1995) and O.C.G.A. sec. 51-12-5.1.
4. All other requests for relief are dismissed.

#### ARBITRATORS' REPORT

We find the **Respondents** jointly and severally liable in the amount of **\$31,058.00** in actual damages, under Count Six of the statement of claim alleging negligence. We find the Respondent **Greenway Capital Corp.** liable for an additional **\$100,000.00** as punitive damages, on the ground that its failure to supervise the handling of Claimant's account evidenced such an entire want of care as to raise the presumption of a conscious indifference to the rights of the claimant and to its legal responsibilities. O.C.G.A. sec. 51-12-5.1; Mastrobuono v. Shearson Lehman Hutton, inc., 115 S. Ct. 1212 (1995).

All forum fees shall be assessed against Respondent **Greenway capital Corp.**

This award is intended as a final resolution of all claims and defenses which were or could have been presented in this action by the parties.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 non-refundable filing fee submitted by Claimant and have assessed the following forum fees:

Pre-Hearing Session	\$ 300.00	(1 x \$300.00)
Hearing Session Fees	\$2,000.00	(4 x \$500.00)
Total Forum Fees	\$2,300.00	
less Hearing Session Deposit	\$ 500.00	
Total Due	\$1,800.00	

The arbitrators have determined that Respondent **Greenway capital Corporation** shall bear the cost of this arbitration.


Respondent **Greenway Capital Corporation** is assessed **\$2,300.00** representing the total forum fees due. Respondent **Greenway** be and hereby is liable and shall pay to the NASD the sum of **\$1,800.00**. Respondent **Greenway Capital Corp** be and hereby is liable and shall pay to Claimant the sum of \$650.00 representing the non-refundable filing fee and hearing session deposit previously paid by the Claimant.

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

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ARBITRATORS' SIGNATURES

  
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Sydney R. Barrett, Esq.  
Public Chairperson

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Morris R. Copeland, Jr.  
Industry Arbitrator

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Industry Arbitrator

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Industry Arbitrator

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Stuart Meyers  
Public Arbitrator

Date of Decision July 10, 1996

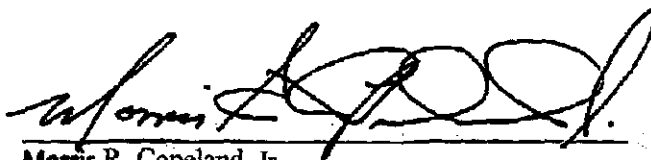
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Date of July 1996

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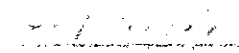
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Sydney R. Barrett, Esq.  
Public Chairperson



Morris R. Copeland, Jr.  
Industry Arbitrator

  
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Stuart Meyers  
Public Arbitrator

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Morris R. Copeland, Jr.  
Industry Arbitrator

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Alvin C. Davidson, Jr.  
Public Arbitrator

  
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Stuart Meyers  
Public Arbitrator

Date of Decision July 10, 1996

Execution  
Date of ~~Decision~~ 7/2/96