

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

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Securities Dealers

In the Matter of the Arbitration Between

1996Lawrence R. Findley, and
Helen Findley,

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Claimants,

v.

No. 95-04486

Century Capital Corp. of South Carolina,
and William D. Hensley,Respondents.

REPRESENTATION OF PARTIES

Claimants Lawrence R. Findley and Helen Findley were represented by Robert J. Findley, Esquire of Huntington Beach, California, and Charles R. Hoover, Esq. of Picoli and Meyer, Phoenix, Arizona.

Respondents Century Capital Corp. of South Carolina and William D. Hensley were represented by Michael K. Wolensky, Esquire of Kutak Rock located in Atlanta, Georgia.

CASE INFORMATION

Claimants Lawrence R. Findley and Helen Findley's joint Statement of Claim was filed on or about September 21, 1995.

Claimants Lawrence R. Findley and Helen Findley's joint Submission Agreement was signed on September 30, 1995.

Respondents Century Capital Corp. of South Carolina and William D. Hensley's joint Statement of Answer was filed on or about December 29, 1995.

Respondent Century Capital Corp. of South Carolina's Submission Agreement was signed on January 11, 1996, by Wanda H. Brown, President of Century Capital Corp. of South Carolina.

Respondent William D. Hensley's Submission Agreement was signed on January 11, 1996.

HEARING INFORMATION

The hearing was held on: September 4, 1996, for two (2) sessions; and

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September 5, 1996, for one (1) session.

The hearing was held in Phoenix, Arizona.

CASE SUMMARY

Claimants Lawrence R. Findley and Helen Findley ("Claimants") alleged that respondent William D. Hensley, as representative and employee of respondent Century Capital Corp. of South Carolina, (hereinafter collectively referred to as "Respondents") made misrepresentations of material facts upon which they relied to their detriment. Claimants asserted that on August 11, 1994, Respondents purchased 2,000 shares of Diamond Fields Resources, Inc. for \$7,430.50. Claimants further asserted that on or about February 14, 1995, respondent William D. Hensley ("respondent Hensley") contacted them and falsely and fraudulently represented that they should sell Diamond Fields Resources, Inc. because Diamond Fields Resources, Inc. was being evicted from their property in Labrador, that this stock would probably go down to \$3.00 per share as a result; Claimants asserted that respondent Hensley "strongly" advised that they sell the stock. Claimants alleged that respondent Hensley made these representations, which were false, with the intent to defraud and deceive them. In reliance on these representations, according to Claimants, they sold the 2,000 shares of Diamond Fields Resources, Inc. for \$17,602.50 on February 14, 1995. Claimants asserted that, subsequent to this sale, the price of this stock had been increasing, and that as of July 13, 1995, their 2,000 shares would have been worth \$110,000; thus, Claimants alleged a loss of \$92,397.50. In addition, Claimants asserted that Respondents induced them to purchase 1,200 shares of Horseshoe Gold Mining, Inc. on June 24, 1994, for \$4,737.50 and 1,000 more shares on July 13, 1994, for \$3,845.00 based on the representations that this stock would appreciate in value just like Aber Resources, which had gone up in value almost 300%, and that this stock, Horseshoe Gold Mining, Inc., would do much better than Diamond Fields Resources, Inc., which is the stock they preferred. Subsequently, according to Claimants, Horseshoe Gold Mining, Inc. stock suffered a loss, which amounted to 90% of the cost. Claimants alleged that as a result of respondent Hensley's aggressive effort to sell Horseshoe Gold Mining, Inc. stock, they lost \$61,383.50.

Claimants made the following legal claims: (1) intentional misrepresentation of fact, against Respondents; (2) negligence misrepresentation of fact, against Respondents; (3) malpractice, against Respondents; (4) failure to supervise and ratification, against respondent Century Capital Corp. of South Carolina; (5) intentional misrepresentation of fact, against respondent Hensley; and (6) exemplary damages, against Respondents.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that the information provided to Claimants on Diamond Fields Resources, Inc. came directly from Diamond Fields Resources, Inc., that this information was truthful at the time, and that respondent Hensley "was appropriately fulfilling his duty to Claimants by providing them with current and truthful information upon which they could make investment decisions." With respect to the Horseshoe Gold Mining, Inc. stock, Respondents contended that Claimants could not have preferred Diamond Fields Resources, Inc. stock because they did not even hear about Diamond Fields Resources, Inc. until August 4, 1994.

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Respondents made the following **affirmative** defenses: (1) The Statement of Claim fails to state a claim for **relief**; (2) Respondents acted in good faith at all relevant times; (3) Claimants' claims for relief with respect to claims of unsuitability are barred by the doctrine of estoppel; (4) Claimants knew of the risks in speculative investing, which was their investment objectives, and they are, therefore, barred and estopped from recovery; (5) "Claimants did not reasonably rely on any matters, statements, or omissions properly attributable to Respondents"; (6) Claimants losses, if any, are not proximately caused by the actions of Respondents, but are the result of Claimants' own negligence; (7) Claimants' claims are barred, in whole or in part, by their contributory or comparative negligence; (8) Claimants' relationship with Respondents is purely contractual and, therefore, any tort claims for purely economic losses should be barred; and (9) "all other matters which may constitute an avoidance or an affirmative defense."

RELIEF REQUESTED

Claimants Lawrence R. Findley and Helen Findley requested: an award in the amount of **\$153,781.00** for compensatory damages; an award for general damages; an award for **special** damages allowed by law from the loss of use of funds; an award in the amount of **\$50,000.00** for **exemplary** damages; and an award for costs.

Respondents Century Capital Corp. of South Carolina and William D. Hensley requested that the Statement of Claim against them be dismissed in its entirety and that they be awarded their costs and attorneys' 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 NASD Regulation, Inc. Office of Dispute Resolution.

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 the Statement of Claim is dismissed in its entirety with prejudice; and
- (2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

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FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were three (3) hearing sessions x \$750 = \$2,250 in forum fees. Pursuant to §10332(b) 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 §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimants Lawrence R. Findley and Helen Findley.

Respondent Century Capital Corp. of South Carolina is liable for and shall pay the member surcharge fee in the amount of \$350 pursuant to §10333 of the NASD Code of Arbitration Procedure.

Claimants Lawrence R. Findley and Helen Findley are liable for and shall pay forum fees in the amount of \$375 (= \$1,125 total forum fees - \$750 hearing session deposit).

Respondents are jointly and severally liable for and shall pay forum fees in the amount of \$1,125.

Fees are payable to NASD Regulation, Inc. Dispute Resolution.

Dated:

George N. Roy
George N. Roy
Public Arbitrator, Presiding Chair

/s/

October 22, 1996

Sara Jo Dew
Sara Jo Dew
Public Arbitrator

/s/

October 21, 1996

Leon G. Mackey
Leon G. Mackey
Industry Arbitrator

/s/

October 22, 1996