

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Judy Wong (Crump)

96-00011

Name of Respondents

Investech Capital Corp.  
Scott M. Symons  
Charles G. Maton  
Investech Agency Inc.

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**REPRESENTATION**

For Claimant: Albert A. Rapoport, Esq., Boca Raton, Florida.

For Respondents Investech Capital Corp., Investech Agency, Inc. and Charles G. Maton: J. Houston Lennard, P.C., Atlanta, Georgia.

The Respondent Scott M. Symons appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: January 2, 1996.

Claimant's Submission Agreement signed on: December 18, 1995.

Joint Statement of Answer filed by Respondents Investech Capital Corp, Investech Agency, Inc and Charles G. Maton on: February 13, 1996.

Respondents Investech Capital Corp, Investech Agency, Inc. and Charles G. Maton's Submission Agreements signed on: February 12, 1996.

Statement of Answer filed by Respondent Scott Symons on: August 19, 1996.

The Respondent Scott Symons did not execute a Submission Agreement as required pursuant to Section 10314 of the Code of Arbitration Procedure.

## HEARING INFORMATION

One pre-hearing conference and two hearing sessions were conducted on July 12, 1996 and August 26, 1996 in Fort Lauderdale, Florida.

## CASE SUMMARY

Claimant alleged that her claim was based on the breach of a fiduciary relationship, especially by Respondent Scott Symons, a broker and employee of Investech Capital Corp. Claimant next alleged that Respondent Symons breached the fiduciary relationship with the Claimant in many ways as the investment in the limited partnership at issue was not suitable for the Claimant and he failed to "know his client." Claimant next alleged that the background of Respondent Symons revealed many arbitration claims against him and previous breaches of NASD rules and regulations.

Respondents Investech Capital Corp., Investech Agency, Inc. and Charles G. Maton ("Investech and Maton") maintained that the Claimant purchased a limited partnership interest in a private placement security marketed by Investech Capital Corp. Respondents Investech and Maton next maintained that all information contained within the broker/dealer new account form, private placement investor suitability questionnaire and partnership subscription agreement was provided by Ms. Wong and further verified by her long standing Certified Public Accountant. Respondents Investech and Maton next maintained that the securities contained within the partnership declined in market value and Ms. Wong liquidated her account within one year of subscription at a loss. Respondents Investech and Maton next maintained that without notice, demand, complaint or other informal compromise of her self imposed loss, Ms. Wong brought the instant action against Investech Capital Corp., the broker/dealer offering the private placement securities, Scott Symons, Investech Capital Corp. branch office principal, Charles Maton, president of Investech Capital Corp. and Investech Agency, Inc. the corporate general partner of the limited partnership and the action was based upon numerous common law grounds and investor unsuitability and Ms. Wong, by and through her attorney, failed to bring action against the registered representative who sold her the security.

Respondents Investech and Maton next maintained that the Respondents Charles Maton and Investech Agency, Inc. had no relationship whatsoever with the solicitation of the private placement subscription by the Claimant and were summarily dismissed from the hearing after protracted discovery enforcement and clear testimony from the Claimant that such action was brought without merit or cause of action.

Respondents Investech and Maton next maintained that they have demanded damages from the Claimant for her frivolous litigation in bringing the action, in failing to make discovery without threat of sanctions and for the general damages to the reputation and business character of the aforesaid Respondents. Respondents Investech and Maton next maintained that all evidence, both documentary and testimonial, was clear and convincing that Respondents' stated damages should be awarded.

Respondent Scott Symons maintained that Ms. Wong was not a client of his and she was invited by her C.P.A. to a seminar which he was conducting at which time he spoke about four different

investments. Respondent Scott Symons next maintained that he was asked to meet with the Claimant which he did to further explain the Equity Hedge Fund to her and based on the information that was provided to him during that meeting he forwarded the paperwork to his broker/dealer for further approval. Respondent Scott Symons further maintained that Ms. Wong is a sophisticated businesswoman as she is an executive with an international aircraft parts distributor and earns approximately \$60,000.00 annually. Respondent Scott Symons further maintained the following: Ms. Wong signed both the New Account Form and subscription documents indicating suitability and previous investment experience; he did not know this client and relied on her written word; the risk of this investment was fully disclosed to the Claimant; his capacity in this transaction was only to answer questions and he was not the Claimant's broker and he relied on her C.P.A. for the information given; he performed his duties as required by the NASD; the Claimant and her attorney chose not to implicate her C.P.A./broker but to name individuals and/or entities who were not directly involved; he did not sell this investment to the Claimant; and the commission gained by selling this investment was miniscule compared to a simple mutual fund. Respondent Scott Symons next maintained that if he or his representative placed greed first, the Claimant would not have been placed in the investment at issue. Finally, Respondent Scott Symons maintained that fault lies with the Claimant and her husband who sought out this investment.

#### **RELIEF REQUESTED**

Claimant requested damages in the sum of approximately \$30,000.00 plus interest, costs and attorneys' fees.

Respondents Investech and Maton requested a dismissal of all claims against them, costs and attorneys' fees plus damages incurred due to the Claimant's filing of the claim.

Respondent Scott Symons requested a dismissal of all claims against him.

#### **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 and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

The Respondents Investech Capital Corp. and Scott Symons be and hereby are liable, jointly and severally, and shall pay to the Claimant the sum of \$10,000.00, pre-judgment interest specifically excluded.

The Respondent Investech and Maton's request for damages is denied.

All requests for punitive damages are denied.

Each party shall bear their respective costs including attorneys' fees.

### FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the panel has assessed forum fees in the sum of \$1,100.00 (2 sessions x \$400.00) plus one pre-hearing conference (\$300.00).

The Claimant is assessed \$550.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD in the sum of \$150.00.

The Respondents Investech Capital Corp. and Scott Symons are assessed, jointly and severally, the sum of \$550.00.

The NASD shall retain the \$120.00 nonrefundable filing fee previously paid by the Claimant to the NASD.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

          /S/            
Louise T. Jeroslow, Esq.

Public

          /S/            
Murray Rosenberg

Public

          /S/            
Bruce M. Alster

Industry

Date of Decision: October 29, 1996