

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Robert Gabel

and

96-00803

Name of Respondent

Century Investors of America, Inc.
Holly E. Hoting

REPRESENTATION OF PARTIES

Robert Gabel ("**Claimant**") was represented by Andrew C. Littman, Esq., Stevens, Littman & Biddison, L.L.C., Boulder, Colorado.

Century Investors of America, Inc. ("**Respondent Century**") and Holly E. Hoting ("**Respondent Hoting**") were represented by David von Gunten, Esq. Treece, Alfrey & Musat, P.C., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about February 23, 1996. Amended Statement of Claim was dated March 5, 1996. Submission Agreement of Claimant Robert Gabel was signed on February 15, 1996.

Statement of Answer was filed by Respondents Century Investors of America, Inc. and Holly E. Hoting on or about May 16, 1996. Submission Agreement of Respondent Holly E. Hoting was signed on May 3, 1996.

HEARING INFORMATION

The hearing was held on Tuesday, November 5, 1996 for two (2) sessions, Wednesday, November 6, 1996 for two (2) sessions and Thursday, November 7, 1996 for two (2) sessions in Denver, Colorado for a total of six (6) sessions.

CASE SUMMARY

Claimant alleged that he placed his trust and confidence in Respondent Hoting and agreed to let her manage his assets. Claimant further alleged that Respondent Hoting proceeded to lose a substantial portion of his assets by recklessly placing them in inappropriate, high risk, limited partnerships. It was also alleged that Respondent misled Claimant and failed to disclose the actual performance of the limited partnership investments. Claimant alleged that the actions of Respondent Hoting constituted: breach of fiduciary duty; breach of common law duty; negligent misrepresentation; fraudulent concealment; false representation; violation of NASD and NYSE rules; negligence; and a violation of the Colorado Consumer Protection Act.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated Respondents always provided careful and professional services to the Claimant, which included thorough explanations of all investments and investment plans. It was also stated by Respondents that they provided additional services to the Claimant which were not normally provided to clients: they altered their normal client reporting practices for Claimant to accommodate his wishes for greater reporting information; Respondent Hoting made herself available to respond to questions and concerns of the Claimant and to accommodate the Claimant's busy schedule. Respondents further stated that the Claimant was a highly compensated executive at U.S. West, maintained a substantial net worth in excess of \$1,000,000 and had previous investment experience before becoming respondent Hoting's client. In addition, Respondents stated that Claimant clearly exercised control over his investments, and would question and sometimes reject the advice of Respondent Hoting. Finally, Respondents stated that the Claimant's IRA account did not lose money, the entire portfolio recorded significant gains during the time that he was Respondent Hoting's client.

RELIEF REQUESTED

Claimant requested an award in his favor and against Respondents, jointly and severally, for their actual damages, estimated at to be \$232,000, loss of use of their funds (estimated to be \$83,000), costs, interest, expert witness fees, treble damages under §6-1-113(22), C.R.S., punitive damages, reasonable attorneys' fees if provided for by contract or statute, and such other and further relief as the arbitrators deem just and proper.

Respondents requested that the claims asserted against them be dismissed and that they be awarded such relief as the panel of arbitrators deems appropriate.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Century Investors of America, Inc. did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration. Century Investors of America,

Inc. being a terminated member of the NASD is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and offered testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 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. The panel finds no liability. The panel further states that had there been a determination of liability, after a review of the entire portfolio no damages would have been awarded.
2. Each party shall bear its' own costs, expenses and fees, including attorneys' fees and expert witness fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There were six (6) sessions x \$1,000 = \$6,000 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, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Robert Gabel. Claimant Robert Gabel shall be and hereby is liable for and shall pay to the NASD Regulation Office of Dispute Resolution the sum of \$5,000 as the balance due for forum fees.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Daniel C. Himelspace, Esq.

November 7, 1996

Daniel C. Himelspace, Esq.
Public Arbitrator, Presiding Chair

/s/ Arthur E. Otten, Jr., Esq.

November 7, 1996

Arthur E. Otten, Jr., Esq.
Public Arbitrator

/s/ Jerome C. Zackroff

November 7, 1996

Jerome C. Zackroff
Industry Arbitrator