

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gregory M. Holtzapple

96-00855

Name of Respondents

Greenway Capital Corp.
Peter Charles Restivo
David Lavender

CASE SUMMARY

In a claim filed with the National Association of Securities Dealer, Inc. on February 27, 1996, Claimant Gregory M. Holtzapple ("Claimant"), who appeared Pro Se, alleged that Respondents Greenway Capital Corp. ("Greenway"), Peter Charles Restivo ("Restivo") and David Lavender ("Lavender") made misrepresentations and churned his account. Claimant further alleged that Lavender, a Greenway agent, originally solicited his business by sounding very sincere and persistent. Claimant also alleged that during his initial conversation with Lavender, he told Lavender about his lack of experience in the stock market. Claimant asserted that upon sensing his reluctance to invest, Lavender assured him that he could make a lot of money within two weeks of investing if he trusted him. Claimant further asserted that Lavender stated that his organization provided professional service which could not be matched by anyone else. Claimant also asserted that Lavender insisted that he purchase 1,000 shares of PAID, in order to earn a quick profit. Claimant contended that he purchased 500 shares of PAID because Lavender assured him that the stock would go from \$3 7/16 a share to \$7.00 a share in a short time. Claimant further contended that on several occasions Lavender inaccurately informed him that the stock was doing well and then all of a sudden he transferred his account to Restivo, another Greenway agent. Claimant also contended that Restivo admitted that PAID was a bad investment because it was losing money. Claimant alleged that Restivo agreed to help him recover his losses if he invested in AUXI, a stock which he claimed was sure to go from \$7.00 to \$11.00 within three weeks. Claimant further alleged that he foolishly trusted Restivo and purchased 500 shares of AUXI. Claimant also alleged that subsequent to the initial AUXI purchase, on August 21, Restivo solicited an additional purchase of 500 shares of AUXI by stating that he could get a special deal on the purchase price. Claimant asserted that Restivo failed to execute the August 21 purchase. Claimant further asserted that on August 28, Restivo incorrectly informed him that AUXI was doing well and convinced him to buy 500 more shares

of AUXI. Claimant also asserted that further conversations with Restivo and others resulted in the discovery of the lies. Claimant contended that he sold his shares of AUXI at a loss after he found out that Restivo lied to him about the stock's performance. Claimant further contended that due to the wrongdoing of the Respondents he suffered damages for which the Respondents should be held liable.

Respondents Greenway Capital Corp. ("Greenway"), David Lavender ("Lavender"), and Peter Charles Restivo ("Restivo") failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Gregory M. Holtzapple requested \$1,221.69 in actual damages and reimbursement of the filing fee.

Respondents Greenway Capital Corp., David Lavender, and Peter Charles Restivo did not file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure, Respondents Greenway Capital Corp., David Lavender and Peter Charles Restivo were sent the statement of claim by regular mail and were given an opportunity to respond, which they failed to do.

In addition, Respondent Greenway Capital Corp. was sent an overdue answer notice via certified mail and the signed return receipt card is on file at the NASD. Respondents Peter Charles Restivo and David Lavender were sent an overdue notice by regular mail.

Respondents Greenway Capital Corp and Peter Charles Restivo were sent notice of the arbitrator's identity in which the arbitrator gave a deadline for submitting documentary evidence via certified mail and the signed return receipt cards are on file at the NASD. Respondent David Lavender was sent the same notice via regular mail.

Pursuant to the By-laws of the NASD, the Arbitrator determined that the Respondents Greenway Capital Corp., Peter Charles Restivo and David Lavender had notice of this proceeding and were required to submit to this arbitration proceeding; and are, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jeffrey M. Bain, Esq. was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Gregory M. Holtzapple on February 22, 1996 and not by the Respondents Greenway Capital Corp., David Lavender and Peter Charles Restivo as is required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Greenway Capital Corp., David Lavender and Peter Charles Restivo are jointly and severally liable and shall pay to the Claimant Gregory M. Holtzapple \$1,221.69 in actual damages.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealer, Inc. by the Claimant Gregory M. Holtzapple shall be retained by the NASD, Inc. Respondent Greenway Capital Corp. is liable and shall pay to the Claimant \$50.00 as reimbursement of the filing fee.

AFFIRMATION

I, **JEFFREY M. BAIN, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



JEFFREY M. BAIN, ESQ.

Date of Decision: October 15, 1996