

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimants

Martha Marin

96-01207

Name of Respondents

Capital Markets America, Inc.  
Harvey A. Wall

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**REPRESENTATION**

For Claimant Martha Marin ("Claimant") appeared David E. Robbins, Esq. of the law offices of Kaufmann, Feiner, Yamin, Gilden, Robbins located in New York, New York.

For Respondent Capital Markets America, Inc. ("CMA") and Respondent Harvey A. Wall ("Wall") (collectively, "Respondents") appeared Anthony Paduano, Esq. of the law offices of Smith Campbell & Paduano located in New York, New York.

**CASE INFORMATION**

Claimants' Statement of Claim was filed on March 13, 1996.  
Claimants' Submission Agreement was signed on March 13, 1996.

Respondent's Statement of Answer was filed on June 19, 1996.  
Respondent's Submission Agreement was signed on June 19, 1996.

**HEARING INFORMATION**

Pre-Hearing Conferences:	September 10, 1996	One Session
	September 20, 1996	One Session
	February 27, 1998	One Session-Full Panel

Hearing Dates/Sessions:	October 8, 1996	Two Sessions
	October 9, 1996	Two Sessions
	October 10, 1996	Two Sessions
	August 5, 1998	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that she opened an account with Respondents with an initial investment of \$50,000. Claimant alleged that she informed Respondents that the account was opened for the purpose of providing income and long-term capital growth. Claimant also alleged that she informed Respondents that the \$50,000 with which she opened her account was primarily derived from life insurance proceeds, the principal of which Claimant wanted to protect, and that she did not want to speculate in the market. Claimant alleged that Respondent Wall assured her that her investments would be in safe, income producing and growth securities. Claimant further alleged that Respondents opened a margin account without her knowledge and, further, that she was not familiar with the concept of margin accounts.

Claimant also alleged that Respondents engaged in churning in her account to maximize commissions. Claimant alleged that, due to the churning of her account on margin trades, she lost more than fifty percent of her initial investment. Claimant further alleged that Respondent Wall evaded her requests for explanations as to the losses in her account. Claimant alleged that, in connection with the handling of her account, Respondents breached fiduciary, regulatory and supervisory duties, obligations, functions and responsibilities owed to Claimant.

Respondent maintained that Claimant represented to Respondent that she was an experienced investor with a net worth of \$250,000, including certain real estate holdings. Respondents generally denied wrongdoing. Respondents maintained that Claimant directed the investment decisions in her account and never complained about the investments until long after the investments were made, despite Claimant's receiving timely account statements.

### **RELIEF REQUESTED**

Claimant requested an award of \$50,000 as against Respondents jointly and severally, together with interest, reasonable expert witness fees, and costs.

Respondents requested that the Statement of Claim be dismissed and that Respondents be awarded their costs and attorneys' fees as well as such other and further relief that the Panel deems appropriate.

### **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 remains 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 CMA and Wall are hereby jointly and severally liable and shall pay to Claimant damages in the amount of \$20,320.00.
2. Each party shall bear their own costs and attorneys' fees.
3. Respondents are hereby jointly and severally liable and shall pay to Claimant the sum of \$400.00 as reimbursement of the Hearing Session Deposit previously deposited by Claimant with NASD Regulation, Inc.

### OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent CMA has paid to NASD Regulation, Inc. the \$200.00 member surcharge previously invoiced.

### FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$120.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

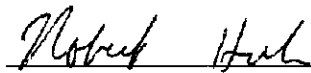
2 pre-hearing conferences x \$300.00	=	\$ 600.00
1 pre-hearing conference (with panel) x \$400.00	=	\$ 400.00
8 hearing sessions x \$400.00	=	<u>\$3200.00</u>
Total Forum Fees	=	\$4200.00

1. Respondents CMA and Wall are hereby jointly and severally liable for the sum of \$4,200.00, representing the total forum fees assessed. Claimant previously deposited the sum of \$400.00 with NASD Regulation, Inc., therefore, Respondents shall pay the balance of \$3,800.00 to NASD Regulation, Inc.
2. Respondents are hereby jointly and severally liable and shall pay Claimant the sum of \$400.00 as provided in the "Award" section above.

**ARBITRATION PANEL**

Robert D. Herschman, Esq. - Public Chairperson  
Shirley Mitgang, Esq. - Public Arbitrator  
William J. Crowe, Jr., Esq. - Industry Arbitrator

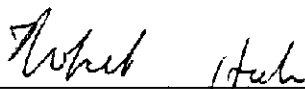
**CONCURRING ARBITRATOR'S SIGNATURE**



Robert D. Herschman, Esq.  
Chairperson-Public Arbitrator

Date of decision: NOVEMBER 19 , 1998

I, Robert D. Herschman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

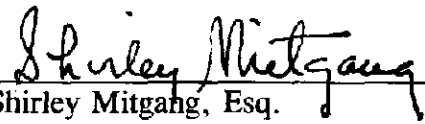


Robert D. Herschman, Esq.

**ARBITRATION PANEL**

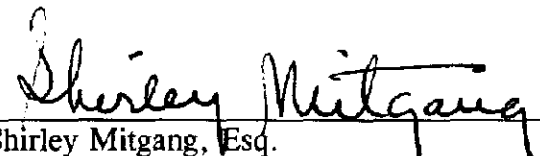
Robert D. Herschman, Esq. - Public Chairperson  
Shirley Mitgang, Esq. - Public Arbitrator  
William J. Crowe, Jr., Esq. - Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
Shirley Mitgang, Esq.  
Public Arbitrator

Date of decision: NOVEMBER 19, 1998

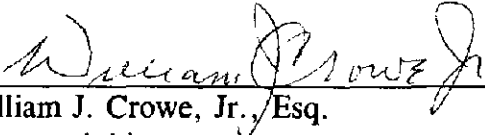
I, Shirley Mitgang, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Shirley Mitgang, Esq.

**ARBITRATION PANEL**

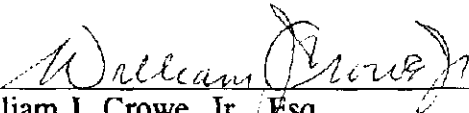
Robert D. Herschman, Esq. - Public Chairperson  
Shirley Mitgang, Esq. - Public Arbitrator  
William J. Crowe, Jr., Esq. - Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
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William J. Crowe, Jr., Esq.  
Industry Arbitrator

Date of decision: NOVEMBER 19, 1998

I, William J. Crowe, Jr., Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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William J. Crowe, Jr., Esq.