

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Harry Kulkowitz and Vickie S. Goldstein

96-01273

Name of Respondent(s)

Buttonwood Securities, Inc.
Securities Planners, Inc. (alias)
Capital Income Fund, L.P.
Capital Funding Corporation
The Baron Group, Inc.
A.R. Baron & Co., Inc.
Edward A. McKay
Jeffrey G. Massey
Andrew E. Bressman

REPRESENTATION

For Claimants Harry Kulkowitz and Victoria S. Goldstein (collectively, the "Claimants") appeared, John G. Rich, Esq., of Eppenstein and Eppenstein, located in New York City, New York.

For Respondents Edward A. McKay ("McKay"), appeared Mark M. Aarons, Esq., of New York City, New York.

For Respondent Jeffrey G. Massey ("Massey"), appeared Brad S. Maistrow, Esq., of Meyers & Maistrow, New York City, New York.

Respondents Buttonwood Securities, Securities Planners Inc., Capitol Income Fund, L.P. and Capital Funding Corporation, did not appear.

The Baron Group, Inc., A.R. Baron & Co., Inc., and Andrew E. Bressman were removed due to bankruptcy.

CASE INFORMATION

Statement of Claim filed on March 21, 1996.

Claimant's Submission Agreement was signed on March 19, 1996.

Statement of Answer filed by Respondent, Edward A. McKay, on May 15, 1996.

Respondent Edward A. McKay's Submission Agreement signed on June 3, 1996.

Statement of Answer filed by Respondent, Jeffrey G. Massey on June 21, 1996.

Respondent, Jeffrey G. Massey's Submission Agreement signed on July 25, 1996.

Respondents Buttonwood Securities, and Securities Planners, Inc., did not file a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

Respondents, The Baron Group, A.R. Baron & Company, Inc., and Andrew E. Bressman were removed due to bankruptcy.

Respondents Capital Income Fund, L.P. and Capital Funding Corporation are Non-members of the NASD without an obligation to arbitrate claims.

HEARING INFORMATION

Hearing Dates/Sessions:	January 30, 1997	-	Two Sessions
	March 10, 1997	-	Two Sessions
	April 24, 1997	-	One Session

The hearings were conducted in the offices of NASD Regulation located at 125 Broad Street New York, New York.

CASE SUMMARY

Claimants alleged that, in 1993, Massey and McKay were representing Securities Planners, Inc. (SPI), and that claimants had indicated a need for a secure investment. Claimants further alleged that Massey and McKay recommended that they invest in AAA rated bonds, which were just as secure as CD's. Claimants also alleged that McKay and Massey told claimants that they could withdraw all, or any part of their money without penalty before maturity by giving 90 days written notice. Claimants asserted that based on these representations they invested their life's savings of \$266,000.00, into what they believed was a portfolio of AAA bonds. Claimants further asserted that they later received a certificate bearing the "Capitol Income Fund, L.P." legend, but at no time were they aware that they were investing in a limited partnership. Claimants contended that, in January of 1995, they decided to withdraw \$30,000.00 from their account, which McKay acknowledged in writing, and later, in April, 1995, claimants received a check for that amount. Claimants further contended that, in August, 1995, they notified McKay of their plans to withdraw the remainder of their investment, and later received written acknowledgement from McKay, stating that claimants would receive their funds in December 1995, and further indicating that preparations for closing the "partnership" were underway, and that the assets would be liquidated in January, 1996, with distribution of principle and interest to take place thereafter. Claimants also contended that after avoiding several calls, McKay reiterated that the funds would be paid to them. Claimants maintained that the checks were not available as McKay had promised and that when they spoke to McKay, he told them that the funds were not currently available, and that he would be giving them post-dated checks. Claimants alleged that McKay explained that their money was being held by

"A.R. Baron & Co., Inc." ("BCI"), and showed claimants a promissory note from The Baron Group, Inc., to Buttonwood for \$250,000.00, plus interest. Claimants alleged that McKay told them he would pay the claimants with the money owed to him by BCI and The Baron Group, Inc., when a deal with another brokerage was closed. Claimants also alleged that McKay gave claimants four postdated checks totalling \$290,000.00, drawn on a "Capitol Funding Corp." account. Claimants asserted that McKay acknowledged his debt to claimants of more than \$290,000.00, and would give them an 8% interest return despite their early withdrawal of the funds. Claimants further asserted that Massey later told them McKay had already liquidated the claimants' portfolio, and used it for his own purposes. Claimants contended that the bonds on McKay's list did not exist, and that though they had received statements showing interest on their accounts, the funds were never invested in a bond portfolio. Claimants allege that the funds were misappropriated by McKay and the other respondents. Claimants further allege that all the checks given to them by McKay were returned unpaid. Claimants also contended that respondents all have recent records of regulatory infractions in several states, that Buttonwood has recently ceased operations, and that McKay is the subject of an NASD market Surveillance Committee for several other violations.

Respondent Massey maintained he is and was, at the time of the claim, employed full-time by N.Y.C. Human Resources. Massey maintained that he is associated on a part-time basis with Securities Planners, Inc., and respondent McKay. Massey maintained that claimants were referred to him and upon review of claimant's investment goals, prepared a generic asset allocation plan and presented it to McKay. Massey maintains that McKay suggested that the claimant invest in the "Capitol Income Fund ("CIF") which McKay described as consisting of AAA rated corporate and U.S. Government bonds that would not be subject to interest rate risk. Massey asserted that claimants executed the application, with a deposit of \$40,000.00, and when they later approached Massey about investing additional funds in CIF, Massey referred them to McKay. Massey further asserted that, in August 1995, claimant called Massey expressing discomfort with the apparent lack of professionalism in the simple statements they were receiving on an irregular basis. Massey also asserted that he advised claimants that they could submit a full redemption request to McKay and invest the funds in U.S. Treasuries, whereupon claimants submitted their 90 day redemption request to McKay. Massey contended that when he asked McKay to deliver the redemption checks to claimants, McKay said that he had already liquidated the bonds and invested the proceeds in his own firm. Massey further contended that after claimants had met with McKay, they were distressed, and he offered to do anything necessary to aid claimants in recovering their funds, and upon their request, sent them all documents in his file relating to claimants' investment in CIF. Massey also maintained that he acted responsibly towards claimant's goals and risk tolerances; acted in good faith in bringing clients to McKay and had no reason to doubt the integrity of claimants' investment;

he did not profit in any manner by bringing claimants to McKay, nor from claimants' investment; all dealings with claimants were conducted with honesty and disclosure of all facts as Massey understood them; claimants lack adequate basis for the complaint against Massey, and any loss suffered by claimants is the result of another's conduct, which cannot be attributed to Massey.

Respondent McKay, in his Answer, asserted his Fifth Amendment rights, and refused to answer the allegations in the Statement of Claim.

RELIEF REQUESTED

Claimants requested compensatory and other damages; punitive damages; accrued interest from the date of loss to the date of the award; reasonable attorneys fees; expert and witness fees, administrative expenses, and any other relief the arbitration panel finds just.

Respondent McKay requested that claimants and each respondent be put to their proofs as to each allegation contained in their Statement of Claim.

Respondent Massey requested that claimant's claim with respect to him be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Claimants withdrew their claims against Respondent Jeffrey G. Massey during the hearings.

FINDINGS OF FACT

The panel unanimously finds that:

1. a) Respondent Edward A. McKay ("McKay") misrepresented to the Claimants the type of investments in which their funds entrusted to him would be placed.

 b) McKay did not invest those funds in the securities in which McKay represented that the fund would be invested.

c) McKay thereafter misrepresented to the Claimants the securities in which the funds had been invested.

d) McKay represented to the Claimants that post-dated checks delivered by him to them in payment would be paid timely by the bank on which they had been drawn.

e) McKay caused those check not to be paid, and

f) McKay by using false pretenses intended to commit a fraud upon the claimants and, in fact, did commit a fraud upon the Claimants.

2. Respondents, Buttonwood securities, Inc., and Securities Planners, Inc., were responsible for the aforesaid actions and misrepresentations of McKay, their Chief Executive Officer.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Edward A. McKay, Buttonwood Securities, Inc., and Securities Planners, Inc., are hereby jointly and severally liable and shall pay to the claimants damages in the amount of \$327,780.07.
2. Respondents, Edward A. McKay, Buttonwood Securities, Inc., and Securities Planners, Inc., are hereby jointly and severally liable and shall pay to the Claimants punitive damages in the amount of \$250,000.00.

Punitive damages are awarded based on the reasoning contained in Claimants' February 21, 1997 letter, a copy of which is annexed hereto (without attachments) and hereby incorporated into this award and on the above-stated findings of fact.

3. Respondents, Edward A. McKay, Buttonwood Securities, Inc., and Securities Planners, Inc., are hereby jointly and severally liable and shall pay to the Claimants attorney's fees in the amount of \$49,169.33.

4. Respondents, Edward A. McKay, Buttonwood Securities, Inc., and Securities Planners, Inc., are hereby jointly and severally liable and shall pay to the Claimants post-award interest from April 24, 1997 to the date of payment at the rate of 9%, the legal rate in the state of New York.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Filing Fee:	-	\$250.00
Hearing Session Fees	-	\$3,000.00 (\$600 x 5 sessions)
Total:		\$3,250.00


Respondents, Edward A. McKay, Buttonwood Securities, Inc., and Securities Planners, Inc., are hereby jointly and severally liable for all forum fees and shall pay them as follows:

1. \$850.00 to the Claimants to reimburse Claimants for the fees they previously deposited with the NASDR, Inc.
2. \$2,400.00 payable to NASD Regulation, Inc.

Concurring Arbitrators'

Signatures

NamePublic/Industry


Blair Allen, Esq.

Date of Decision: June 19, 1997

RECIPIENTS:

Blair Allen, Esq.

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Name

Public/Industry


John W. Thomas, Jr.

Date of Decision: June 19, 1997

RECIPIENTS:

Blair Allen, Esq.
George G.P. Knapp
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George G. P. Knapp
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Date of Decision: June 19, 1997

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John W. Thomas, Jr.