

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of Arbitration Between

Charles V. Bentley,

Claimant,

and

No. 96-01557

Financial Planning Consultants, Inc., Robert W. Waugh,  
Lars D. Omlid, and Kingsley O. Wright, Sr.,

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimant, Charles V. Bentley, was represented by Clifford B. Faddis, Jr. Esquire, located in St. Louis, Missouri.

Financial Planning Consultants, Inc., Lars D. Omlid, and Kingsley O. Wright, Sr., were represented by Firmin A. Puricelli, Esquire, located in Clayton, Missouri.

Robert W. Waugh was represented by Jeffrey B. Kelvin, J.D., LL.M, of Financial Planners Assistance, located in Plymouth Meeting, Pennsylvania.

### **CASE INFORMATION**

Charles V. Bentley's Statement of Claim was filed on or about April 11, 1996.

Charles V. Bentley's Answer to Counterclaim was filed on or about February 25, 1997.

Charles V. Bentley's Submission Agreement was signed on April 8, 1996.

Financial Planning Consultants, Inc., Lars D. Omlid, and Kingsley O. Wright, Sr.'s Statement of Answer and Counterclaim was filed on or about February 13, 1997.

Financial Planning Consultants, Inc.'s Submission Agreement was signed on July 26, 1996 by Boyd Atteberry, President of Financial Planning Consultants, Inc.

Lars D. Omlid's Submission Agreement was signed on July 26, 1996.

Kingsley O. Wright, Sr.'s Submission Agreement was signed on July 26, 1996.

Robert W. Waugh's Statement of Answer and Cross-Claim was filed on or about July 9, 1996.

Robert W. Waugh's Submission Agreement was signed on June 25, 1996.

### **HEARING INFORMATION**

A pre-hearing conference was held on May 13, 1997 for one (1) session.

The hearing was held on: May 20, 1997 for two (2) sessions; and May 21, 1997 for one (1) session.

The hearing was held in St. Louis, Missouri.

### **CASE SUMMARY**

Claimant, Charles V. Bentley ("Claimant"), brought this action to recover losses sustained in his account with Financial Planning Consultants, Inc. ("Financial"), through its registered representatives Robert W. Waugh ("Waugh"), Lars D. Omlid ("Omlid"), and Kingsley O. Wright, Sr. ("Wright").

According to Claimant, Financial, through Waugh, furnished investment advice when they prepared a financial planning proposal for him in April of 1987, which listed his primary investment concern as preservation of capital. Claimant contended that there was never a discussion of risk factors and no prospectuses were provided with the plan or before investments were sought that discussed risk factors or appropriateness of risky investments in an IRA account. Claimant stated that he executed a new account form on April 7, 1987 and initially invested \$119,384.29. Claimant asserted that he purchased Sierra Capital Realty Trust VI on April 20, 1987 for \$20,000, which has a present value of \$15,637. Claimant further stated that in 1988 Waugh left Financial, at which time Omlid and Wright took over his account. Claimant maintained that he followed Omlid and Wright's recommendations by investing in the following limited partnerships:

<u>NAME</u>	<u>DATE</u>	<u>AMOUNT PAID</u>	<u>PRESENT VALUE</u>	<u>LOSS</u>
Merico Oil and Gas Income Fund 89-1	4/14/89	\$25,000	\$0	\$25,000
CSA Income Fund LP III	10/20/88	20,000	1,150	18,850
Jones Cable 15-A	4/19/89	25,000	7,350	17,650
Jones Cable 14-B	10/20/88	25,000	7,150	17,850
Gemini 87-88 XVI, LP	5/2/89	25,000	1,625	23,375

AEI Real Estate				
Fund XVIII	9/5/89	32,000	21,888	10,112

Claimant contended that Omlid and Wright assured him that his capital was safe. Claimant alleged that Financial, Waugh, Omlid, and Wright's conduct violated the NASD Rules of Fair Practice and the industry rules of "know your customer," constituted breach of contract, and constituted breach of fiduciary duty. In addition, Claimant alleged that Financial's conduct constituted negligent supervision and violated of federal securities laws and Missouri state law, including § 409.411 RSMo.

Financial, Omlid, and Wright denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. They stated that at all relevant times Claimant's account was maintained consistently with his stated investment objectives and instructions. Financial, Omlid, and Wright argued that Claimant has no cause of action that did not lapse under § 10304 of the NASD Code of Arbitration Procedure. They further contended that Claimant is a sophisticated investor of fairly substantial means who understood fully the benefits as well as the risks associated with the stock market, was fully aware of the activity in his account, regularly conferred with Financial and its representatives, and received written confirmations of each trade as well as monthly statements. According to Financial, Omlid, and Wright, not once did Claimant object in writing to any transaction in the account.

Additionally, Financial, Omlid, and Wright made the following affirmative defenses: (1) the Statement of Claim does not state a cause of action against them upon which relief can be granted; (2) the relief requested against them is barred by the doctrine of estoppel; (3) the relief requested against them is barred by the doctrine of waiver; (4) the relief requested against them is barred by the doctrine of laches; (5) the relief requested against them is barred by the doctrine of ratification; (6) the relief requested against them is barred by Claimant's failure to mitigate his damages; (7) the relief requested against them is barred by Claimant's assumption of the risks inherent in all securities transactions; (8) the damages allegedly sustained by Claimant were caused, in whole or in part, by the culpable conduct or negligent acts of commission and/or omission of Claimant; (9) the relief requested against them is barred by Art. III, § 27, of the NASD Rules of Fair Procedure; (10) the relief requested against them is barred by the applicable statute of limitations and/or limitations period; (11) the relief requested against them is barred by statute and judicial opinion; and (12) the relief requested against them is barred by Claimant's unclean hands.

Financial, Omlid, and Wright brought their Counterclaim to recover attorney's fees, costs, and related expenses allegedly resulting from Claimant's negligence, misrepresentation, fraud, and breach of contract in filing what they deemed a frivolous lawsuit.

Claimant denied the allegations contained in Financial, Omlid, and Wright's Counterclaim.

#### **RELIEF REQUESTED**

Claimant, Charles V. Bentley, requested an award of: \$117,715 to restore his principle to the

amount originally invested; \$13,760 for commissions paid; \$20,806 for a 6% return per year on his original investment, less the amount he received in distributions; \$284,562 for punitive damages; and attorney's fees. He also requested that the Counterclaim be denied.

Financial Planning Consultants, Inc., Lars D. Omlid, and Kingsley O. Wright, Sr. requested that the claims asserted against them be dismissed in their entirety, and that they recover such relief as may be deemed just, proper and equitable under the circumstances including reimbursement of counsel fees involved herein.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Prior to the hearing, Respondents, Financial Planning Consultants, Inc., Lars D. Omlid, Kingsley O. Wright, Sr., and Robert W. Waugh, moved to dismiss the Statement of Claim. The undersigned panel of arbitrators denied the request by Financial Planning Consultants, Inc., Lars D. Omlid, and Kingsley O. Wright, Sr., but the Statement of Claim was dismissed as against Robert W. Waugh pursuant to § 10304 of the NASD Code of Arbitration Procedure.

At the hearing, Financial Planning Consultants, Inc., Lars D. Omlid, and Kingsley O. Wright, Sr. moved to dismiss the Statement of Claim pursuant to § 10304 of the NASD Code of Arbitration Procedure. The undersigned panel of arbitrators denied said motion.

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. That the Statement of Claim is hereby denied with prejudice.
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 and there were three (3) hearing sessions x \$750 = \$2,550 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 § 10322(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Charles V. Bentley.

Charles V. Bentley is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$600 (= \$2,550 - \$750 hearing session deposit by Charles V. Bentley - \$600 hearing session deposit by Financial Planning Consultants, Inc. - \$600 hearing session deposit by Robert W. Waugh).

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Financial Planning Consultants, Inc.

Pursuant to § 10322(c) of the Code, 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 \$600 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Financial Planning Consultants, Inc.

Pursuant to § 10322(c) of the Code, 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 \$600 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Robert W. Waugh.

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

Concurring Arbitrators' Signatures

Keith D. Patten  
Keith D. Patten  
Chairperson  
Public Arbitrator

July 15, 1997  
Dated:

George T. Mehan, Jr.  
George T. Mehan, Jr.  
Panelist  
Public Arbitrator

July 28, 1997  
Dated:

Richard L. Johannesman  
Richard L. Johannesman  
Panelist  
Industry Arbitrator

July 7, 1997  
Dated: