

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Rose-Marie Comstock, Trustee,  
Comstock Family Trust, Rose-  
Marie Comstock, Conservator for the  
Estate of Piety Ferreira

Arbitration  
No. 96-02087

Name of Respondent(s)

Corporate Benefit Securities Inc.  
Leonard Kahn

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REPRESENTATION

For Claimants: Matthew F. Quint, Esq., Quint & Valkevich, San  
Francisco, California

For Respondent Leonard Kahn: Pat Mullen, Esq., Mullen, MacInnes &  
Redding, Ltd., Austin, Texas

For Respondent Corporate Benefit Securities Inc.: No appearance by  
this Respondent.

CASE INFORMATION

Statement of Claim filed: May 13, 1996

Claimants' Submission Agreements signed: May 11, 1996 and June 15,  
1996

Joint Statement of Answer filed by Respondents: August 8, 1996

Respondents did not file Submission Agreements. However, they are subject to NASD Regulation, Inc. (NASDR) jurisdiction in accordance with Section 10301 of the NASDR Code of Arbitration Procedure.

#### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):  
December 13, 1996 (one session)

Hearing Date(s)/Session(s): March 20, 1997 (one session)  
May 2, 1997 (two sessions)

Hearing Location: San Francisco, California

#### CASE SUMMARY

Claimants alleged the following claims with respect to their investment in promissory notes of Towers Financial Corporation (TFC): 1) Breach of Contractual Agreements; 2) Breach of Fiduciary Duty; 3) Fraud-Intentional Misrepresentation; 4) Fraud-Negligent Misrepresentation; and 5) Fraud-Suppression of Material Fact.

Respondents denied each and every material allegation of fact set forth in Claimants' Statement of Claim. Respondents further denied that they made any written representations warranting or guaranteeing the Claimants a specific rate of return, that the accounts receivables were insured, that the TFC's payments on the Notes purchased by Claimants would always be on time, or that TFC was guaranteed to be a sound and growing company. Respondents alleged that they were unaware of any adverse financial information regarding TFC prior to the time of Claimants' investments. Respondents further alleged that while completing the investment documents for TFC, Claimants indicated at all times that they were aware of the risk of the purchase of the notes, that they were accredited investors under Regulation D, and that they represented that they could afford a complete loss of the investment. Respondents further alleged that they had no reason to believe that any of these representations were untrue, especially in light of the financial disclosures made on the new account form, which indicated that the Claimants had net worth exceeding \$1,000,000.00, had current income of \$200,000.00, had extensive experience in investing in stocks, bonds, and limited partnerships, and were looking for income, with risk factors listed as good quality and

speculative. Respondents further alleged that they specifically advised that such investments had risk, and the Claimants were provided with a copy of the prospectus, which outlined these risks. Respondents further alleged that all of the offering documents also invited the Claimants, as prospective investors, to telephone or write to the issuer for more information. Respondents also asserted various defenses.

#### RELIEF REQUESTED

Claimants requested:

1. Compensatory damages in a sum of not less than \$200,000.00;
2. Interest on the foregoing sums in accordance with the terms of the promissory notes alleged in Claimants' Claim, from the earliest possible date;
3. Attorneys' fees and costs according to proof;
4. Punitive and exemplary damages in the sum of not less than \$300,000.00; and
5. Such other and further relief as the panel may deem just and proper.

#### OTHER ISSUES CONSIDERED AND DECIDED

Respondent Corporate Benefit Securities Inc. did not appear at hearing. The panel determined that proper notice and service had been effectuated with respect to Corporate Benefit Securities Inc. and ruled to proceed in its absence.

The parties have agreed that the Award in this matter may be executed in either 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 originals remain on file with NASDR.

#### 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 Corporate Benefit Securities Inc. and Leonard Kahn are jointly and severally liable for and shall pay to Claimant Rose-Marie Comstock the sum of \$100,000.00 with respect to claims on behalf of the Estate of Piety Ferreira, plus interest at 7% from February 1, 1993 until the date of this Award.

2. Respondent Corporate Benefit Securities Inc. is solely liable for and shall pay to Claimant Rose-Marie Comstock the sum of \$100,000.00 with respect to claims on behalf of the Comstock Family Trust, plus interest at 7% from February 1, 1993 until the date of this Award.

3. Claimants' claims for punitive and exemplary damages are denied.

4. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASDR shall refund the \$750.00 hearing session deposit previously deposited by the Claimants. Forum fees are assessed two-thirds against Respondents, jointly and severally, and one-third against Respondent Corporate Benefit Securities Inc., solely. Forum fees are calculated as follows:

One pre-hearing session @ \$300.00/session	=	\$ 300.00
Three hearing sessions @ \$750.00/session	=	\$2,250.00
Total fees assessed	=	\$2,550.00

Respondents' share (two-thirds), jointly and severally	=	\$1,700.00
Balance due	=	\$1,700.00

Respondent Corporate Benefit Securities Inc.'s share (one-third), solely	=	\$ 850.00
Balance due	=	\$ 850.00

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

Name ..... Public / Industry

Herb Schwartz, Esq.  
Kenneth D. Gack, Esq.  
Theodore R. Seton

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

Concurring Arbitrators' Signatures



Herb Schwartz, Esq.

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Kenneth D. Gack, Esq.

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Theodore R. Seton

Date of Decision: \_\_\_\_\_

Date served: 5/28/1997

ARBITRATORS

Name ..... Public / Industry

Herb Schwartz, Esq.

Public Arbitrator

Kenneth D. Gack, Esq.

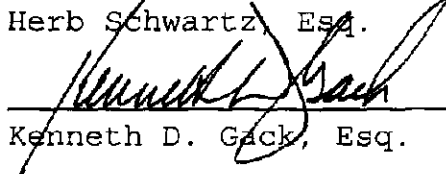
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Kenneth D. Gack, Esq.

*Theodore R Seton*

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Date of Decision: \_\_\_\_\_

Date served: 5/28/1997