

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant(s)

Guy P. Jackson Trust

96-03142

Name of Respondent(s)

Capital Investment Group, Inc.
Richard K. Bryant
Elmer Otis Edgerton, Jr.
Harry M. Bryant, Sr.
John Bryant Davidson

REPRESENTATION

For Claimant Guy P. Jackson Trust ("Claimant") appeared Andrew O. Whiteman, Esq., of the law office Hartzell and Whiteman, LLP located in Raleigh, North Carolina.

For Respondents Capital Investment Group, Inc. ("CIG"), Richard K. Bryant ("R. Bryant"), Elmer Otis Edgerton, Jr. ("Edgerton"), and Harry M. Bryant, Sr. ("H. Bryant") appeared J. Anthony Penry, Esq., of the law office Smith Helms Mulliss and Moore, LLP located in Raleigh, North Carolina.

Respondent John Bryant Davidson ("Davidson") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on September 04, 1996.

Claimant's Submission Agreement signed on July 17, 1996.

A Joint Statement of Answer filed by Respondents CIG, R. Bryant, Edgerton, and H. Bryant, on October 29, 1996.

Respondent CIG failed to file a signed Submission Agreement.

Respondent R. Bryant's Submission Agreement signed on December 23, 1996.

Respondent Edgerton's Submission Agreement signed on December 23, 1996.

Respondent H. Bryant's Submission Agreement signed on December 23, 1996.

Respondent Davidson did not file a Statement of Answer.

Respondent Davidson did not file a signed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:	June 19, 1997	One Session
Hearing Date(s)/Sessions:	August 18, 1997	Two Sessions

The pre-hearing conference was held telephonically. The hearing sessions were held at the Sheraton Hotel located in Charlotte, North Carolina.

CASE SUMMARY

Claimant stated that Respondent Davidson was the broker and investment advisor of the Guy P. Jackson Trust Account, in which the funds were to be distributed to the claimant's nephew. Accordingly, the Claimant contends that the funds were to be invested conservatively. Therefore, pursuant to Respondents advice, Claimant liquidated the trust account and invested the proceeds in "a guaranteed interest account" with a company called Union Assurance. The investment totaled \$295,958.

Claimant maintained that upon learning that Respondent Davidson was no longer with CIG, he informed Respondent Davidson that he wanted to liquidate his account with Union Assurance. According to the Claimant, Respondent Davidson informed him that he could not close the account until his investment anniversary date, February 1995. Claimant maintained that in February 1995, he approached Respondent Davidson regarding the liquidation of this account. Respondent Davidson stated that he would have to find out the procedures for closing the accounts. This was the last time claimant spoke with Respondent Davidson. Furthermore, claimant notes that he never received any income or return of principal on the Union Assurance investment. It is Claimants position that Respondent committed violations of the North Carolina Securities Act Section 78A-56(a) and (b)¹, engaged in fraud, breached his contract and breached his fiduciary duty.

Respondents CIG, Richard K. Bryant, E.O. Edgerton, J.R., and Harry M. Bryant, denied all allegations made in the Statement of Claim and offered the following affirmative defenses: 1) Any actions or omissions undertaken by Respondent Davidson were outside the course and scope of any authority provided to him by CIG, accordingly, neither CIG nor the individual Respondents were responsible for Respondent Davidson's alleged misconduct.; 2) These Respondents are not responsible for any misconduct committed by Respondent Davidson following the cessation of his relationship with CIG.; 3) The acts and omissions of these Respondents, if any, were not a proximate cause of any losses or damages sustained by Claimant.; 4) These Respondents did not know, and in the exercise of reasonable care could not have known, of any untrue statement of material fact or any omission to state a material fact to Claimant.; and 5) With regards to Claimant's contentions that these Respondents are secondarily liable, these Respondents did not know, and in the exercise of reasonable care should not have known, of the existence of the facts by reason of which the liability is alleged to exist.

Respondent Davidson submitted a statement indicating that he could only be present at the hearing if a subpoena was issued. Respondent Davidson also maintained that because he had been punished in criminal court proceedings the arbitration against him was without merit.

¹According to the Statement of Claim, these provisions prohibits devices, schemes, or artifices to defraud and further prohibits the sale of securities by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made not misleading.

RELIEF REQUESTED

Claimant requested:

- (1) An award of \$295,000.00 in actual damages.
- (2) Interest at the rate provided by law (eight percent per annum) from the time of loss, until payment is made by Respondents.
- (3) Attorneys' fees and costs.
- (4) Punitive damages in such amount as the arbitrators deem proper.

Respondents CIG, Richard K. Bryant, E.O. Edgerton, J.R., and Harry M. Bryant requested:

- (1) That the Statement of Claim be dismissed and that Claimant recover nothing of these Respondents.
- (2) That all costs be assessed against Claimants.

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.

The panel made the following determinations concerning Respondent Davidson, who did not file a Statement of Answer and a Submission Agreement and did not appear at the hearing in this matter:

- (1) Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
- (2) The panel concluded that Respondent Davidson was a person associated with a member of the NASD at the time the controversy arose. Accordingly, the panel found personal jurisdiction over Respondent Davidson pursuant to Rule 10301 of the Code.
- (3) The panel determined that on or about September 4, 1996, the NASD forwarded a copy of Claimant's statement of claim and uniform submission agreement, via regular mail to Respondent Davidson. These documents were not returned to the Association.
- (4) The panel determined that the Statement of Claim was properly served upon Respondent Davidson pursuant to Rule 10314(a) of the Code. Therefore, the panel concluded that Respondent Davidson was required to file a Statement of Answer and a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code.

At the hearing it was determined that all Respondents except John Bryant Davidson had previously entered into a settlement agreement with the Claimant, and that the purpose of the hearing was to determine the extent, if any, of Respondent Davidson's liability.

The panel found that Respondent Davidson engaged in fraudulent conduct. Thus, pursuant to the Memorandum of Law provided by the Claimant the panel determined that it had authority to award punitive damages.

Claimant offered a motion that should they receive a favorable decision against Respondent Davidson that the decision set forth specific findings. The panel granted this motion.

AWARD

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

- (1) That Respondent Davidson had obtained money from Claimant by means of fraud; that a fiduciary relationship existed between Respondent Davidson and Claimant's trustee Robert A. Jackson and that Respondent Davidson committed fraud against Claimant while acting in a fiduciary capacity; and that Respondent Davidson is liable to Claimant under the North Carolina Securities Act.
- (2) Respondent Davidson be and is hereby liable and shall pay to Claimant actual damages, inclusive of interest and costs \$382,718.85, which amount is to be reduced by \$275,000.00, the amount of the settlement between Claimant and all other Respondents.
- (3) Respondent Davidson be and is hereby liable and shall pay to Claimant the sum of \$1,148,156.55 in punitive damages.
- (4) Respondent Davidson be and is hereby liable and shall pay to Claimant the sum of \$44,578.75 in attorney's fees.
- (5) Respondents CIG, Richard K. Bryant, E.O. Edgerton, J.R., and Harry M. Bryant and John Bryant Davidson, be and are hereby jointly and severally liable for all NASD costs and fees assessed.

FORUM FEES

Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following Forum Fees:

Pre-Hearing Session x \$300.00	=	\$ 300.00
2 Hearing Sessions x \$750.00	=	\$1,500.00

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Minus Claimant's \$750.00 deposit		<u>(\$750.00)</u>
Total Outstanding	=	\$1050.00

Respondents be and are hereby jointly and severally liable and shall pay to NASD Regulation, Inc. the sum of \$1050.00 representing the total outstanding fees.

Claimant previously deposited \$750.00 with NASD Regulation, Inc., therefore, Respondents be and are hereby jointly and severally liable and shall pay to Claimant the sum of \$750.00 as reimbursement of the hearing session deposit.

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

A handwritten signature in black ink, appearing to be 'M. Elster', written over a horizontal line.

Marvin Elster, Esq.
Public Chairperson

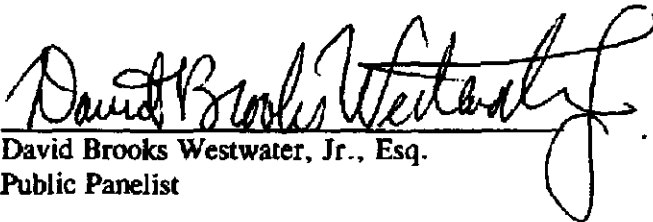
David Brooks Westwater, Jr., Esq.
Public Panelist

George H. Rose
Industry Panelist

Date of Decision: November 18, 1997

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