

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Bernard Wartenberg

96-04143

Name of Respondents

Thomas Scipione  
Chemical Investment Service Corp.

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**REPRESENTATION**

Claimant, Bernard Wartenberg, ("claimant"), appeared Pro Se.

For Respondents, Chemical Investment Service Corp. ("CISC"), and Thomas Scipione ("Scipione"), appeared, Gayle A. Mandaro, Esq., in house counsel for respondent CISC.

**CASE INFORMATION**

Statement of Claim filed: September 16, 1996.

Claimant's Submission Agreement signed on: September 12, 1996.

Joint Statement of Answer filed by Respondent on: November 25, 1996.

Respondent CISC's Submission Agreement signed on: November 25, 1996.

Respondent Scipione's Submission Agreement signed on: November 25, 1996.

**HEARING INFORMATION**

Hearing dates/sessions: April 2, 1997 - 1 Session

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

**CASE SUMMARY**

Claimant alleged that, on June 25, 1996, he invested \$54,000 in a Bank of America/Nationwide Variable

Annuity (the "Annuity") through respondent Scipione, a representative of respondent CISC. Claimant further alleged that Scipione told him that he had a 15 day trial period. Claimant contended that Scipione represented that the Annuity was conservative, had a low level of risk and that there would be no commission for six years. Claimant further contended that he did not receive a prospectus. Claimant alleged that he received a statement of account dated June 25, 1996 which listed the value of his investment as \$50,000. Claimant further alleged that he received a quarterly statement dated June 30, 1996 which listed the value of his investment as \$50,218.20. Claimant contended that on July 10, 1996 he wrote a letter to cancel the Annuity and received \$48,787.03, for a total loss of \$5,212.98. Claimant further contended that respondents misinformed him and issued incorrect account statements.

Respondents maintained that, prior to his purchase of the Annuity, claimant signed a disclosure letter which expressly provided, among other things, that claimant's investment was long-term and involved investment risk, including the possible loss of the principal amount invested. Respondents further maintained that the disclosure letter further provided that claimant was willing to see the value of his investment fluctuate because he was seeking the potential for higher returns. Respondents maintained that the disclosure letter also provided that if the annuity contract was canceled, the surrender value might be more or less than the original investment due to market fluctuation and that claimant has received a prospectus from his registered representative. Respondents further maintained that the Annuity provided for a "free look period" pursuant to which claimant had the option of surrendering the annuity without incurring any surrender charges. Respondent contended that claimant, in fact, did receive a free look period; the difference between his initial investment of \$54,000 and the check he received in the amount of \$48,787.02 is entirely attributable to market loss.

#### **RELIEF REQUESTED**

Claimant requested \$5,212.98 in actual damages and \$4,788.02 in punitive damages.

Respondents requested that the Statement of Claim be dismissed with prejudice and the costs of the proceeding be assessed against the claimant.

#### **OTHER ISSUES CONSIDERED AND 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 originals remain on file with the NASD.

#### **AWARD**

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

1. Respondents be and hereby are jointly and severally liable and shall pay to the Claimant \$5,212.98 plus interest at the New York statutory rate from June 21, 1996 to the date of this award.
2. All requests for attorney fees are denied.
3. All requests for punitive damages are denied.
4. All other requests for relief are denied.

## FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrator has assessed the following forum fees:

1 Hearing Session x \$200	= \$200.00
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Respondents be and hereby are jointly and severally liable for \$200.00 representing the total forum fees assessed.

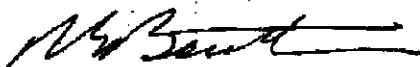
**Fees are payable to NASD Regulation, Inc.**

ARBITRATOR'S SIGNATURE



Robert E. Bartkus, Esq.

I, Robert E. Bartkus, 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 E. Bartkus, Esq.

DATE OF DECISION: MAY 13, 1997