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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

John B. Malone

96-04598

Name of Respondent

Euro American Capital Corporation  
James Farnell  
Cross Financial Services, Inc.  
InterCapital Funding Corporation  
Delaware Charter Guarantee & Trust Company

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**REPRESENTATION**

The Claimant appeared pro se.

The Respondent James Farnell appeared pro se.

For Respondent InterCapital Funding Corporation: Stephen Spalter, former President, West Palm Beach, Florida.

The Respondent Euro American Capital Corporation did not appear.

For Respondent Cross Financial Services, Inc.: Willie R. Barnes, Receiver, Westminster, California.

For Respondent Delaware Charter Guarantee & Trust Company: Gene Paranczak, JD, Compliance Director, Second Vice President, Wilmington, Delaware.

**CASE INFORMATION**

Statement of Claim filed on October 15, 1996.

Claimant's Submission Agreement signed on September 29, 1996.

Motion to Dismiss filed by Respondent James Farnell on May 14, 1997.

Response to Motion to Dismiss filed by Claimant on June 19, 1997.

Letter dated November 5, 1996 received by this office from Gene Paranczak, JD, Delaware Charter Guarantee & Trust Company on December 9, 1996.

Letter dated May 29, 1997 received by this office from Stephen Spalter, Former President, InterCapital

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Funding Corporation.

Letter dated May 30, 1997 received by this office from Willie R. Barnes, Receiver, Cross Financial Services, Inc. on June 2, 1997.

The Respondents did not file executed Submission Agreements.

### **HEARING INFORMATION**

A pre-hearing conference was conducted on March 7, 1997 with the arbitration panel and one hearing session was conducted on September 17, 1997 in Tampa, Florida.

### **CASE SUMMARY**

Claimant alleged that James Farnell recommended that he invest \$125,000.00 in InterCapital Funding Corporation and \$20,000.00 in Cross Financial Services, Inc. Claimant alleged that as a result of Respondent James Farnell's recommendations that he invest in speculative securities that were unsuitable for him given his investment objectives, financial status and lack of sophistication, he suffered losses of at least, but not limited to, benefit of the bargain damages, lost opportunity damages and pre-judgment interest. Claimant next alleged that Respondents' failure to disclose the unsuitable concentration of speculative securities in Claimant's account, the unsuitability of their recommendations, the excessive nature of the trades, the customer complaints concerning Respondent Farnell's sales practices and Respondent Farnell's improper sales tactics constituted independent torts for which the Claimant sought relief. In addition, Claimant alleged that the non-disclosures constituted fraudulent concealment in view of Respondent Farnell's fiduciary relationship with Claimant. Claimant further asserted allegations of failure to supervise, breach of contract, common law fraud, breach of fiduciary duty, negligence and gross negligence and unjust enrichment.

Respondent Farnell maintained that the NASD did not have jurisdiction over this controversy as there was not a broker/dealer involved in any of the transactions at issue and Mr. Malone conducted business with and completed his transactions directly with the companies referenced above. Respondent Farnell further maintained that he was not registered with a broker/dealer at the time when Mr. Malone was conducting business with InterCapital Funding Corp. and Cross Financial Services, Inc. and that NASD records would substantiate his assertion. Mr. Farnell further maintained that he never had a relationship with Euro-American Capital Corporation.

In response, the Claimant maintained that Mr. Farnell's CRD record demonstrated that he was a licensed registered representative during the time in question.

### **RELIEF REQUESTED**

Claimant requested damages in the sum of \$145,000.00 plus interest at the rate of 6% for three years plus \$100,000.00 in punitive damages.

Respondent Farnell requested a dismissal of the arbitration.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties that attended the hearing 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, those parties agreed to

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receive conformed copies of the Award while the original(s) remain on file with NASD Regulation, Inc.

The Respondents InterCapital Funding Corporation and Delaware Charter Guarantee & Trust Company are not members of the NASD and declined to submit to the jurisdiction of the NASD. Therefore, the panel made no findings with respect to InterCapital Funding Corporation and Delaware Charter Guarantee & Trust Company.

On July 16, 1997 the Claimant informed NASD Regulation, Inc. that he was withdrawing, without prejudice, all claims against Respondent Euro-American Capital Corp.

### **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. All claims against the Respondent Cross Financial Services, Inc. are dismissed without prejudice as that entity is not a member of the NASD and did not submit to the jurisdiction of the NASD.
2. Respondent James Farnell is found not liable and, therefore, all claims against him are hereby dismissed based upon Claimant's failure to prove his case.
3. The Claimant's request for punitive damages is denied.

### **FORUM FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, Forum Fees in the sum of \$1,500.00 (one session: \$750.00 plus one pre-hearing conference with the panel: \$750.00) are assessed as follows:

The Claimant is assessed the sum of \$750.00 less the \$750.00 previously deposited in full satisfaction thereof.

The Respondent Farnell is assessed the sum of \$750.00.

Fees are payable to National Association of Securities Dealers Regulation, Inc.

Concurring Arbitrators' Signatures  
Name

\_\_\_\_\_/s/\_\_\_\_\_  
Beverly S. Gordon, Esq.

\_\_\_\_\_/s/\_\_\_\_\_  
Nicholas John Taldone, Esq.

\_\_\_\_\_/s/\_\_\_\_\_  
Hal S. Holtsinger

Date of Decision: October 8, 1997