

## NASD REGULATION, INC. AWARD

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In the Matter of the Arbitration Between

### Names of Claimants

Richard A. and Cynthia Farnham

96-05817

### Names of Respondents

Thomas F. White & Co., Inc.  
Greenway Capital Corporation  
Charles Molnar

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### REPRESENTATION

For Claimants Richard A. Farnham and Cynthia Farnham ("Claimants") appeared Anne H. Orr, Esq., a private practitioner located in Atlanta, Georgia.

Claimants withdrew all claims against Respondent Thomas F. White & Co., Inc. ("Thomas White") prior to the hearing and, therefore, no representative appeared at the hearing on behalf of this Respondent.

Respondent Greenway Capital Corporation ("Greenway") did not appear at the hearing in this matter.

Respondent Charles Molnar ("Molnar") did not appear at the hearing in this matter.

### CASE INFORMATION

Claimants' Statement of Claim was filed on January 8, 1997. Claimants' Submission Agreement was signed on November 23, 1996.

Respondent Greenway filed a Statement of Answer on or about July 1, 1997. Respondent Greenway's Submission Agreement was signed on July 1, 1997.

Respondent Molnar filed a Statement of Answer on February 26, 1997. Respondent Molnar's Submission Agreement was signed on February 22, 1997.

### HEARING INFORMATION

Pre-Hearing Conference:

July 28, 1997

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Full Panel

Hearing Dates/Sessions:

October 14, 1997

- Two Sessions

The pre-hearing conference was held telephonically. The hearings were conducted at the offices of NASD Regulation, Inc., located in Atlanta, Georgia.

### **CASE SUMMARY**

Claimants alleged that Molnar, a broker with Greenway and Thomas White, violated NASD Conduct Rules when he engaged in manipulative, deceptive and fraudulent acts in handling Claimants' accounts. Claimants also alleged that Molnar misrepresented to them the true nature of their investments, and that Respondents breached their fiduciary duty. Claimants further alleged that the compensation to Respondents was concealed from them, that many transactions were unauthorized, and that their accounts were churned. Claimants asserted that Molnar traded in highly speculative and unsuitable securities. Claimants also asserted that Greenway and Thomas White failed to supervise Molnar, resulting in a loss of principle and earnings.

Greenway generally denied all of the material allegations in the Statement of Claim. Respondent Greenway maintained that Claimants' account was located at Greenway Atlanta, which was a "franchise OSJ" (office of supervisory jurisdiction), and that it did not have jurisdiction over transactions there. Greenway also maintained that Claimants followed Molnar to several firms at which he was employed and, therefore, appeared to be satisfied with Molnar's handling of their accounts. Greenway further maintained that the transactions were suitable for Claimants in light of their income and net worth as stated on the Claimants' new account application.

Molnar maintained that Claimants' allegations were a clear attempt to extort monies to replace funds legally and voluntarily invested over a period of eight years in a stock market understood to be risk oriented and unpredictable. Molnar also maintained that he committed no fraudulent, deceptive or manipulative acts or practices, and that Claimants were completely aware of their actions. Molnar further maintained that Richard Farnham consciously, willingly, and voluntarily transferred his accounts from firm to firm, authorized all trades, and had complete control and ability to terminate these accounts at any time if any impropriety was committed or even suspected.

### **RELIEF REQUESTED**

Claimant Cynthia Farnham requested actual damages in the amount of \$17,920.60 and interest in the amount of \$27,372.13. Claimant Richard Farnham requested actual damages in the amount of \$83,159.44 and interest in the amount of \$47,090.01. Claimants jointly requested punitive damages in the amount of \$34,319.67, attorneys' fees and expenses.

Greenway requested that the claims against them be dismissed in their entirety, that, should the panel find against any of the Respondents, the award be specifically apportioned among the Respondents, and that the costs of the hearing not be held against Greenway.

Molnar requested that the ruling be in his favor, as well as in the favor of the other Respondents accused in this complaint.

### 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 originals remain on file with the NASD.

By letter dated February 27, 1997, Claimants withdrew all claims against Respondent Thomas White.

At the hearing, Claimants struck their claims for improper mark-ups.

The panel made the following determinations concerning Respondents Greenway and Molnar, who 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 arbitrators found that Greenway was a member of the NASD at the time this controversy arose and that Molnar was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Greenway and Molnar pursuant to Rule 10301 of the Code.
3. In accordance with Rules 10310, 10315, and 10318 of the Code, the panel found that NASD Regulation provided Greenway and Molnar with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Greenway and Molnar, whose absences were unexcused.

### 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. Respondent Molnar is hereby liable and shall pay to Claimant Cynthia Farnham the sum of \$17,920.60 in compensatory damages, plus 7% interest per annum from May 1, 1991 until payment.
2. Respondent Molnar is hereby liable and shall pay to Claimant Richard Farnham the sum of \$17,105.00 in compensatory damages, plus 7% interest per annum from May 1, 1991 until payment.
3. Respondents Greenway and Molnar are hereby jointly and severally liable and shall pay to Claimant Richard Farnham the sum of \$4,500.00 in compensatory damages, plus 7% interest per annum from April 15, 1993 until payment.

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