

**AWARD
NASD Regulation, Inc.**

In the Matter of the Arbitration Between

Name of Claimants

Richard and Susan Bagwell, individually and as
Trustees Richard and Susan Bagwell Living Trust

and

98-00093
Scottsdale, Arizona

Name of Respondents

Foresight Analysts, Inc.
Daniel M. Isard
Deborah Isard
Capital Analysts, Incorporated
Fortis Investors, Inc.
Royal Alliance Associates, Inc.

REPRESENTATION OF PARTIES

Richard and Susan Bagwell, individually and as Trustees Richard and Susan Bagwell Living Trust ("Claimants") were represented by Rosemary J. Shockman, Esq., Shockman Law Office, P.C., Scottsdale, Arizona.

Foresight Analysts, Inc. ("Respondent Foresight"), Daniel M. Isard ("Respondent Daniel Isard") and Deborah Isard ("Respondent Deborah Isard") were represented by Timothy J. Thomason, Esq., Streich Lang, Phoenix, Arizona.

Capital Analysts, Incorporated ("Respondent Capital") was represented by James A. Ryan, Esq., Streich Lang, Phoenix, Arizona.

Fortis Investors, Inc. ("Respondent Fortis") was represented by Joel P. Hoxie, Esq., Jeffrey B. Guldner, Esq., Snell & Wilmer L.L.P., Phoenix, Arizona.

Royal Alliance Associates, Inc. ("Respondent Royal") was represented by John J. Nicgorski, Esq., Mohr, Hackett, Pederson, Blakely, Randolph & Haga, P.C., Phoenix, Arizona.

CASE INFORMATION

The Statement of Claim was filed on or about January 9, 1998. Amended Statement of Claim was filed on or about September 17, 1998. Submission Agreement of Claimants Richard and Susan

Bagwell, individually and as Trustees Richard and Susan Bagwell Living Trust was signed on January 7, 1998.

Statement of Answer was filed by Respondents Daniel M. Isard and Deborah Isard on or about May 6, 1998. Answer to Amended Statement of Claim was filed by Respondent Foresight Analysts, Inc., Daniel M. Isard and Deborah Isard on or about October 13, 1998. Submission Agreement of Respondent Daniel M. Isard was signed but undated and not notarized. Submission Agreement of Respondent Deborah Isard was signed on April 16, 1998. Submission Agreement of Respondent Foresight Analysts, Inc. was signed on or about February 3, 2000.

Answer of Capital Analysts, Incorporated to Amended Statement of Claim was filed on or about November 6, 1998. Submission Agreement of Respondent Capital Analysts, Incorporated was signed on November 3, 1998 by Robert S. Cogan.

Statement of Answer was filed by Respondent Fortis Investors, Inc. on or about May 4, 1998. Amended Statement of Answer on Behalf of Respondent Fortis Investors, Inc. was filed on or about October 6, 1998. Submission Agreement of Respondent Fortis Investors, Inc. was signed on April 28, 1998 by John Hite.

Statement of Answer was filed by Respondent Royal Alliance Associates, Inc. on or about May 11, 1998.

CASE SUMMARY

Claimant submitted the following summary:

Claimants alleged that Daniel Isard, acting as a registered financial adviser, together with Foresight Analysts, Inc. recommended that they place and did place more than 80% of their retirement funds in limited partnerships, an amount in excess of \$800,000. These limited partnerships were purchased from 1988-1992. After the limited partnerships were purchased, Mr. Isard and Foresight Analysts, Inc. continued to monitor the investments and to advise the claimants about them on a regular basis.

Prior to the arbitration hearing, claims against broker dealers, Capital Analysts, Inc., Royal Alliance Associates, Inc. and Fortis Investors, Inc. were settled. The case then was arbitrated to the panel on the issues of whether Mr. Isard acted negligently or breached his fiduciary duties in recommending further purchases of limited partnerships after March, 1991, in providing written reports that improperly reported on the value and yield of the portfolio, in advising the Bagwells to continue holding all of the limited partnerships after March of 1991, and never recommending a liquidation of any of the limited partnerships.

Respondents Daniel Isard and Foresight Analysts, Inc. took the following positions at arbitration:

Mr. Isard did not act negligently or breach any fiduciary duties in recommending additional limited partnerships to claimants after March of 1991. Rather, the limited partnership investments were suitable for the claimants' stated needs and desires. The risks of these investments were fully disclosed. Claimants chose to invest in four new limited partnerships after March of 1991, based upon full and complete information.

Mr. Isard had no duty to advise the claimants to sell existing limited partnerships in March of 1991 or thereafter. Indeed, claimants' expert himself stated that reasonable practice did not require Mr. Isard to advise the Bagwells to sell their limited partnerships and reinvest the proceeds in other investments. Rather, it was reasonable to advise the Bagwells to not sell the limited partnership interests at a substantial market discount, and to hold those investments. Moreover, it is unreasonable to assume that Mr. Isard should have foreseen that the limited partnership investments would not perform well and that the stock market and other alternative investments would perform as well as they did.

Mr. Isard did not tell the Bagwells to spend distributions of capital. Rather, the Bagwells decided what they would spend and when. Mr. Isard advised the claimants that distributions were return of capital when information to that effect was provided by the partnerships.

The Bagwells contend that they wanted to invest in "conservative" investments. If proceeds from the limited partnerships were reinvested in March of 1991 in conservative investments, claimants would have minimal, if any, damages.

Further, under Arizona law, Claimants' claims should be barred altogether by failure to comply with the statute of limitations.

RELIEF REQUESTED

Claimants requested an award of damages in the approximate amount of \$900,000.00.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The NASD was advised by Claimants that they had settled their claims asserted against Respondents Fortis Investors, Inc. and Capital Analysts, Inc. on January 3, 2000.

Claimants also settled their claims asserted against Respondent Royal Alliance Associates, Inc.

Respondent Foresight Analysts, Inc. did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but, having answered the claim, appeared and presented evidence at the hearing, is bound by the determination of the arbitration panel on all issues submitted.

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(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

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 Foresight Analysts, Inc., Daniel M. Isard and Deborah Isard shall be and hereby are jointly and severally liable for and shall pay to the Claimants Richard and Susan Bagwell individually and as Trustees Richard and Susan Bagwell Living Trust, the sum of \$55,000.00 as compensatory damages. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
2. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee

= \$250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) are: Capital Analysts, Incorporated, Fortis Investors, Inc. and Royal Alliance Associates, Inc.

| | |
|-------------------------|--------------|
| Member surcharge | = \$2,000.00 |
| Pre-hearing process fee | = \$ 600.00 |
| Hearing process fee | = \$4,500.00 |

Adjournment Fees

Adjournments requested during these proceedings:

Adjournment of March 16, 1999-March 19, 1999 hearing dates requested by Respondent Foresight Analysts, Inc. fees were waived by the panel.

Adjournment of March 16, 1999-March 19, 1999 hearing dates requested by Claimants, fees were waived by the panel.

Forum Fees and Assessments

The Arbitrator(Panel) assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|--|-------------|
| One (1) Pre-hearing session(s) with a single arbitrator x \$300.00 | = \$ 300.00 |
| Pre-hearing conference(s): March 10, 1999 1 session | |

| | |
|--|---------------|
| One (1) Pre-hearing session(s) with Panel x \$1,000.00 | = \$ 1,000.00 |
| Pre-hearing conference(s): April 26, 1999 1 session | |

| | |
|--|---------------|
| Nine (9) Hearing sessions x \$1,000.00 | = \$ 9,000.00 |
| Hearing Date(s): | |
| January 31, 2000 | 2 sessions |
| February 1, 2000 | 2 sessions |
| February 2, 2000 | 2 sessions |
| February 3, 2000 | 2 sessions |
| February 4, 2000 | 1 session |

| | |
|------------------|---------------|
| Total Forum Fees | = \$10,300.00 |
|------------------|---------------|

The Arbitration Panel has assessed \$5,150.00 of the forum fees to Claimants Richard and Susan Bagwell, individually and as Trustees Richard and Susan Bagwell Living Trust.
The Arbitration Panel has assessed \$5,150.00 of the forum fees jointly and severally to Respondents Foresight Analysts, Inc., Daniel M. Isard and Deborah Isard.

Fee Summary

Claimants, Richard and Susan Bagwell, individually and as Trustees Richard and Susan Bagwell Living Trust, shall be and hereby are jointly and severally liable for:

| | |
|-----------------------------------|--------------|
| Initial Filing Fee | = \$ 250.00 |
| <u>Forum Fees</u> | = \$5,150.00 |
| Total Fees | = \$5,400.00 |
| <u>Less payments</u> | = \$1,250.00 |
| Balance Due NASD Regulation, Inc. | = \$4,150.00 |

Respondent, *Fortis Investors, Inc.*, shall be and hereby is liable for:

| | |
|-----------------------------------|--------------|
| <u>Member Fees</u> | = \$7,100.00 |
| Total Fees | = \$7,100.00 |
| <u>Less payments</u> | = \$7,100.00 |
| Balance Due NASD Regulation, Inc. | = \$ 0.00 |

Respondent, *Royal Alliance Associates, Inc.*, shall be and hereby is liable for:

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|-----------------------------------|--------------|
| <u>Member Fees</u> | = \$7,100.00 |
| Total Fees | = \$7,100.00 |
| <u>Less payments</u> | = \$7,100.00 |
| Balance Due NASD Regulation, Inc. | = \$ 0.00 |

Respondent, *Capital Analysts, Incorporated*, shall be and hereby is liable for:

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|-----------------------------------|--------------|
| <u>Member Fees</u> | = \$7,100.00 |
| Total Fees | = \$7,100.00 |
| <u>Less payments</u> | = \$5,100.00 |
| Balance Due NASD Regulation, Inc. | = \$2,000.00 |

Respondents Foresight Analysts, Inc., Daniel M. Isard and Deborah Isard, shall be and hereby are jointly and severally liable for:

| | |
|-----------------------------------|--------------|
| <u>Forum Fees</u> | = \$5,150.00 |
| Balance Due NASD Regulation, Inc. | = \$5,150.00 |

All balances are due to NASD Regulation, Inc.

Dated:

/s/ Robert S. Mautner
Robert S. Mautner, Esq.
Public Arbitrator, Presiding Chair

February 28, 2000

/s/ Ronald E. Hibbing \
Ronald Edward Hibbing, Esq.
Public Arbitrator

March 1, 2000

/s/ Thomas W. Burke
Thomas W. Burke
Industry Arbitrator

March 1, 2000

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Respondents Foresight Analysts, Inc., Daniel M. Isard and Deborah Isard, shall be and hereby are jointly and severally liable for:

Forum Fees

= \$5,150.00

Balance Due NASD Regulation, Inc

= \$5,150.00

All balances are due to NASD Regulation, Inc.

Dated:

Robert S. Mautner

Feb. 28, 2000

Robert S. Mautner, Esq.
Public Arbitrator, Presiding Chair

Ronald Edward Hibbing, Esq.
Public Arbitrator

Thomas W. Burke
Industry Arbitrator

Respondents Foresight Analysts, Inc., Daniel M. Isard and Deborah Isard, shall be and hereby are jointly and severally liable for:

Forum Fees

Balance Due NASD Regulation, Inc.

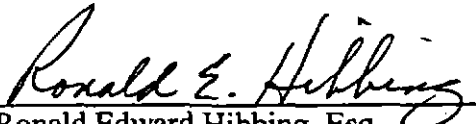
= \$5,150.00

= \$5,150.00

All balances are due to NASD Regulation, Inc.

Dated:

Robert S. Mautner, Esq.
Public Arbitrator, Presiding Chair


Ronald Edward Hibbing, Esq.
Public Arbitrator

Thomas W. Burke
Industry Arbitrator

March 1, 2000

Public Arbitrator

Thomas W. Burke

Respondents Foresight Analysts, Inc., Daniel M. Isard and Deborah Isard, shall be and hereby are jointly and severally liable for:

Forum Fees

Balance Due NASD Regulation, Inc.

= \$5,150.00

= \$5,150.00

All balances are due to NASD Regulation, Inc.

Dated:

Robert S. Mautner, Esq.
Public Arbitrator, Presiding Chair

Ronald Edward Hibbing, Esq.
Public Arbitrator

Thomas W. Burke
Thomas W. Burke
Industry Arbitrator

3-1-2000

Thomas W. Burke
Industry Arbitrator