

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Antonio and Maria Canaan

Case No. 99-00175

Names of Respondents

VTR Capital, Inc. n/k/a Fairchild Fin'l Group
Randolph K. Pace
Alan Novich
Warren Schreiber

REPRESENTATION OF PARTIES

For Claimants Antonio Canaan and Maria Canaan, hereinafter referred to as "Claimants": William M. Rishoi, Esq. and Philip J. Snyderburn, Esq. of the law firm of Rishoi & Swann, Winter Park, Florida.

For Respondent VTR Capital, Inc. ("VTR"): Ruthann G. Niosi, Esq. of the Law Offices of Ruthann G. Niosi, Esq., P.C., New York, New York. On November 3, 1999, NASD Regulation Inc. was advised that Ruthann Niosi, Esq. was withdrawing as counsel for Respondent VTR, which would thereafter be represented by Kim Amendola of Respondent VTR, New York, New York. On November 16, 1999, NASD Regulation Inc. was advised that Respondent VTR would thereafter be represented by Ruthann Niosi, Esq. On January 7, 2000, NASD Regulation Inc. was advised that Ruthann G. Niosi, Esq. was withdrawing as counsel for Respondent VTR, which would thereafter be represented by Kim Amendola of Respondent VTR, Uniondale, New York.

For Respondent Randolph K. Pace ("Pace"): Edward M. Spiro, Esq. and Peter M. Spett, Esq. of the law firm of Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C., New York, New York.

Respondent Warren Schreiber ("Schreiber") did not appear.

Respondent Alan Novich ("Novich") did not appear.

CASE INFORMATION

Statement of Claim filed on or about: January 13, 1999.

Claimants Antonio Canaan and Maria Canaan signed the Uniform Submission Agreement: November 24, 1998.

Pro hac vice application and certification by Florida counsel, Anthony W. Djinis, Esq. of the law firm of Pickard and Djinis, Washington, D.C., sponsoring Ruthann G. Niosi, Esq.'s. Florida appearance filed on or about: March 11, 1999.

Claimants' Motion to Add Three Secret Owners of Respondent VTR as Respondents in This Action filed on or about: September 29, 1999.

Claimants' Amended Statement of Claim filed on or about: November 15, 1999.

Statement of Answer filed by Respondent VTR on or about: May 3, 1999.

Respondent VTR, by its Director of Compliance, Edward Sita, signed the Uniform Submission Agreement: February 18, 1999.

Respondent VTR did not file a Statement of Answer to the Amended Statement of Claim.

Respondents Pace, Schreiber and Novich did not file Statements of Answer or executed Uniform Submission Agreements.

Order to Show Cause why order should not be made to stay arbitration proceedings as to Respondents Pace, Novich and Schreiber filed on or about: December 15, 1999.

Stipulation and Order staying arbitration proceedings against Respondents Pace, Novich and Schreiber filed on or about: January 13, 2000.

CASE SUMMARY

Claimants asserted causes of action under common law fraud, breach of fiduciary duty, breach of contract, and violations of Sections 517.301 and 517.211, Florida Statutes. The causes of action relate to Respondents' misrepresentations and omissions, their total and intentional failure to supervise, their flagrant and repeated violations of Claimants' trust and suitability requirements, and their market manipulation. Claimants further alleged the following: Respondents, indicted by a federal grand jury for securities fraud, engaged in the manipulation of securities that were purchased by Claimants. Respondents had recommended and sold to Claimants Interiors, Inc. securities even after NASD Regulation, Inc. had issued a complaint against Respondent VTR and its President for fraudulently manipulating Interiors, Inc. stock. Although Claimants had requested conservative growth oriented securities, Respondents recommended investments in speculative securities, including Compare Generiks, Inc. stock, Interiors, Inc. stock and warrants, Conolog Corp. stock, Bev-Tyme warrants, and Perry's Majestic Beer, Inc. stock. Respondents had assured Claimants of their investments' liquidity and conservative growth orientation; however, Claimants' net investment of \$81,500.00 fell in value to \$19,750.00 for a net out of pocket loss to Claimants of \$61,750.00.

Respondent VTR generally denied all of the material allegations in the Statement of Claim and asserted that Respondent VTR acted in accordance and in conformity with all applicable rules, regulations, industry standards and practices. Respondent VTR further alleged the following: Claimants were explicit in their objectives and specific about their financial capabilities. Claimants specifically advised Respondent VTR that their objectives were speculation, their income was \$140,000.00 and their net worth was \$250,000.00, that they had prior investment experience, and were willing to invest in securities with a high degree of risk and/or high activity. Claimants gave authorization to purchase the recommended investments because they were consistent with Claimants' goals and their broker took

copious, contemporaneous notes of each transaction and conversation, confirming Claimants' authorizations. Claimants' liquidity problems existed only because Claimants' stated sales prices had no commonality with actual market prices; thus, the sale orders would not, and could not, then occur. Respondent VTR asserted the following defenses: Claimants failed to state a claim; any losses suffered by Claimants were the result of market losses; Claimants' claims are barred by theories of estoppel and waiver; Claimants' contributory negligence; Claimants' ratification; and, Claimants' failure to use due diligence and failure to mitigate damages. Furthermore, Claimants are not entitled to punitive damages awards or attorneys' fees as a matter of law, Claimants failed to state a claim for fraud, and Claimants' fraud claims are barred by the statute of limitations.

RELIEF REQUESTED

Claimants requested compensatory damages of \$64,753.00, prejudgment interest, attorney's fees and costs, forum fees and punitive damages.

Respondent VTR requested 1) that the claims against it be dismissed in their entirety; 2) that the costs of the hearing not be held against Respondent VTR; and 3) for any other just and equitable relief that the Arbitration Panel (the "Panel") deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On November 5, 1999, the Panel granted Claimants' Motion to Add Three Secret Owners of Respondent VTR as Respondents in this Action.

On December 21, 1999, the Supreme Court of the State of New York, County of New York, Justice Walter B. Tolub, presiding, ordered by Stipulation and Order that arbitration proceedings against Respondents Pace, Novich and Schreiber were stayed pending the final resolution of all proceedings in United States v. Randolph Pace, et al., S198 Cr. 1247 (LAP), United States District Court, Southern District of New York. Therefore, the Panel made no determinations with respect to Respondents Pace, Novich and Schreiber.

Respondent VTR did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitrators determined that Respondent VTR has been properly served with the Statement of Claim, submitted a Statement of Answer and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

At the evidentiary hearing, the Panel granted Claimants' oral motion to amend the claim to include a claim for violation of Sections 517.301 and 517.211, Florida Statutes.

The party present at the hearing has agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent VTR is liable for common law fraud, breach of fiduciary duty, breach of contract and violation of Sections 517.301 and 517.211, Florida Statutes and shall pay to Claimant the sum of \$64,753.00.
2. Prejudgment interest shall begin to accrue as of December 19, 1996, at the statutory rate in Florida, and shall continue to accrue until the Award is paid in full.
3. Claimants' request for an award of attorney's fees is denied.
4. Claimants' request for an award of punitive damages is denied.
5. All other requests for relief not specifically addressed herein are denied.

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 = \$150.00

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, Respondent VTR is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

Forum Fees and Assessments

The 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:

Two (2) Pre-hearing sessions with Panel	x \$500.00	= \$1,000.00
Pre-hearing conferences:	August 17, 1999	1 session
	February 4, 2000	1 session
One (1) Hearing session	x \$500.00	= <u>\$ 500.00</u>

Hearing Date: February 29, 2000 1 session

Total Forum Fees = \$1,500.00

The Panel has assessed the total forum fees of \$1,500.00 to Respondent VTR.

Fee Summary

Claimants Antonio Canaan and Maria Canaan be and hereby are solely liable for:

<u>Initial Filing Fee</u>	<u>= \$150.00</u>
Total Fees	= \$150.00
<u>Less payments</u>	<u>= \$150.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondent VTR be and hereby is solely liable for:

Member Fees	= \$3,100.00
<u>Forum Fees</u>	<u>= \$1,500.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$1,000.00</u>
Balance Due NASD Regulation, Inc.	= \$3,600.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/
Beverly S. Gordon, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/
Richard J. Jones, III, Esq.
Public Arbitrator

Signature Date

/s/
Daniel Calabria
Industry Arbitrator

Signature Date

April 10, 2000
Date of Service (For NASD office use only)

MAR. 28. 2000 2:39PM

NO. 6641 P. 6/6

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Hearing Date: February 29, 2000 1 session

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Beverly S. Gordon Esq.
Beverly S. Gordon, Esq.
Public Arbitrator, Presiding Chair

Mar. 29, 2000
Signature Date

Richard J. Jones, III, Esq.
Richard J. Jones, III, Esq.
Public Arbitrator

Signature Date

Daniel Calabria
Daniel Calabria
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrators' Signatures

Beverly S. Gordon, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Richard J. Jones, III, Esq.
Public Arbitrator

3/28/2000

Signature Date

Daniel Calabria
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

TO KEVIN DEARDON
FAX # 561-416-2267

Hearing Date: February 29, 2000 1 session

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Beverly S. Gordon, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Richard J. Jones, III, Esq.
Public Arbitrator

Signature Date



Daniel Calabria
Industry Arbitrator

4/6/00

Signature Date

Date of Service (For NASD office use only)