

**Award**  
**NASD Dispute Resolution, Inc.**

---

In the Matter of the Arbitration Between

Name of Claimant

Doris M. Brennenman

Case No. 00-00778

Names of Respondents

Roger Jack Mouallem  
Martin Irwin Schaffer

---

**REPRESENTATION OF PARTIES**

Doris M. Brennenman ("Brennenman"), hereinafter referred to as "Claimant," appeared pro se.

For Respondent Roger Jack Mouallem ("Moullam"): Delmer C. Gowing, III, Esq., Delray Beach, Florida.

For Respondent Martin Irwin Schaffer ("Schaffer"): Katherine Nathan, Attorney and Vincent Bruno, Director of Compliance, GKN Securities Corp. until a substitution of counsel occurred on or about January 17, 2001. Thereafter, Respondent Schaffer was represented by Adam D. Palmer, Esq., Dreier Baritz & Coleman, Boca Raton, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 22, 2000.

Claimant signed the Uniform Submission Agreement: January 24, 2000.

Statement of Answer filed by Respondent Moullam on or about: March 20, 2000.

Respondent Moullam signed the Uniform Submission Agreement: March 17, 2000.

Statement of Answer filed by Respondent Schaffer on or about: April 20, 2000.

Respondent Schaffer signed the Uniform Submission Agreement: March 15, 2000.

**CASE SUMMARY**

Claimant asserted the following: Respondents used unethical sales practices to convince her to sell her Elcom stock; Respondents breached their fiduciary duty to Claimant; Respondents failed to obtain a client history; Respondents failed to determine the Claimant's goals and the suitability of her investments; Respondents controlled and abused the broker/client relationship; Respondents failed to utilize due diligence; and, Respondent Schaffer failed to properly supervise Respondent Moullam.

Unless specifically admitted in his Answer, Respondent Moullam denied the allegations made in the Statement of Claim and asserted the following: Claimant's claims are barred by the doctrines of waiver, estoppel, ratification and assumption of risk; all risks were fully explained to Claimant, who thereafter, knowingly, willingly and voluntarily assumed the market risks inherent in her investment activities; Claimant failed to reasonably or properly mitigate her damages after she knew or should have known of the investment activities and/or losses complained of; Claimant's own acts or omissions contributed to any damages incurred by Claimant; Claimant is comparatively negligent for any damages incurred; Claimant is not entitled to seek tort damages in the absence of personal injury or property damage; Respondent Moullam did not owe a fiduciary duty to Claimant because she had a non-discretionary account; and, Respondent Moullam acted in good faith and conducted himself reasonably at all times material.

Unless specifically admitted in his Answer, Respondent Schaffer denied the allegations made in the Statement of Claim and asserted that he properly supervised Respondent Moullam and Respondent Moullam acted appropriately to guard the best interests of Claimant.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$20,000.00, punitive damages of \$5,000.00 and costs of the proceeding.

Respondent Moullam requested that all claims against him be dismissed in their entirety. Respondent Moullam also requested that he be awarded his costs and attorneys' fees incurred in the defense of this case and that all references to this matter be expunged from Respondent Moullam's Central Registration Depository ("CRD") record.

Respondent Schaffer requested that all claims against him be dismissed in their entirety and that Claimant be assessed all costs relating to this proceeding.

#### **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.

At the conclusion of the presentation of Claimant's case, the Arbitrator granted Respondents Moullam's and Schaffer's Motions to Dismiss.

At the evidentiary hearing, Respondent Schaffer requested that all references to this matter be expunged from his CRD record maintained with the NASD.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the

post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are denied in their entirety.

Claimant's request for punitive damages is denied.

Claimant's claims against Respondents Moullam and Schaffer are dismissed, with prejudice.

The Arbitrator recommends the expungment of all references to the above-captioned arbitration proceeding from Respondents Moullam's and Schaffer's CRD records maintained with the NASD with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Moullam and Schaffer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungment directive.

Each party shall bear their respective costs, including attorney's fees.

All other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$125.00
--------------------------	------------

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firm is Respondents' firm.

Member surcharge	= \$400.00
------------------	------------

#### **Adjournment Fees**

No adjournments were requested during these proceedings.

#### **Forum Fees and Assessments**

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

One (1) Pre-hearing session with a single arbitrator	x \$450.00	= \$450.00
Pre-hearing conference:	December 19, 2000	1 session

One (1) Hearing session x \$450.00 = \$450.00  
Hearing Date: February 6, 2001 1 session

Total Forum Fees = \$900.00

The Arbitrator has assessed \$450.00 of the forum fees to Claimant.

The Arbitrator has assessed \$450.00 of the forum fees jointly and severally to Respondents  
Moullam and Schaffer.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$125.00
Forum Fees	= \$450.00
Total Fees	= \$575.00
Less payments	= <u>\$575.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

GKN Securities Corp. be and hereby is solely liable for:

Member Fees	= \$400.00
Total Fees	= \$400.00
Less payments	= <u>\$400.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents Moullam and Schaffer be and hereby are jointly and severally liable for:

Forum Fees	= \$450.00
Total Fees	= \$450.00
Less payments	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$450.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon

receipt of the Award by the parties.

**Arbitrator's Signature**

/s/

**Leonard H. Wolf., Esq.**  
**Public Arbitrator, Presiding Chair**

**Signature Date**

March 19, 2001


Date of Service (For NASD-DR office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 00-00778  
Award Page 3

---

receipt of the Award by the parties.

Arbitrator's Signature

  
Leonard H. Wolf, Esq.  
Public Arbitrator, Presiding Chair

9/15/01  
Signature Date

Date of Service (For NASD-DR office use only)