

**Award  
NASD**

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In the Matter of the Arbitration Between:

Names of the Claimants

Arturo E. and Joanna M. De Matheu

Case Number: 00-05310

Names of the Respondents

Daniel Techera

R. Cabezas

R.K. Grace & Company

John D. Kaweske

Marc L. Abramson

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Arturo E. and Joanna M. De Matheu ("De Matheu"), hereinafter referred to as "Claimants": Robert B. Macaulay, Esq., Mitrani, Rynor, Adamsky & Macaulay, P.A., Miami, Florida.

For Respondents John D. Kaweske ("Kaweske") and Marc L. Abramson ("Abramson"): Stephen A. Mendelsohn, Esq., Rutherford, Mulhall & Wargo, P.A., Boca Raton, Florida.

Respondent Ricardo Cabezas ("Cabezas") appeared pro se.

Respondent Daniel Techera ("Techera") did not appear.

Respondent R.K. Grace & Company ("Grace") did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: November 29, 2000.

Amended Statement of Claim filed on or about: October 15, 2001.

Motion for Leave to file Second Amended Statement of Claim filed on or about: May 20, 2002.

Second Amended Statement of Claim filed on or about: June 14, 2002.

Claimants signed the Uniform Submission Agreements: November 27, 2000, March 26, 2001 and April 24, 2001.

Motion to Dismiss Statement of Claim filed by Respondent Abramson on or about: June 11, 2001.

Motion to Dismiss Statement of Claim filed by Respondent Kaweske on or about: June 26, 2001.

Claimants responded to the Motions to Dismiss on or about: July 25, 2001.

Motion to Dismiss Amended Statement of Claim filed by Respondent Kaweske on or about: October 25, 2001.

Statement of Answer to Amended Statement of Claim filed by Respondent Kaweske on or about: March 12, 2002.

Statement of Answer to Second Amended Statement of Claim filed by Respondent Kaweske on or about: June 28, 2002.

Respondents Techera, Cabezas, Abramson and Grace did not file Statements of Answer. Respondents Kaweske, Techera, Cabezas, Abramson and Grace did not file executed Uniform Submission Agreements.

### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) Respondents violated numerous industry rules and federal and Florida securities laws and regulations, including but not limited to, Section 10(b) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder and Section 517.301, Florida Statutes; 2) Respondents breached their fiduciary duties to Claimants; 3) Respondents willfully and/or negligently failed to follow Claimants' directions; 4) Respondents engaged in unauthorized trading; 5) Claimants' account was handled in a negligent and/or intentionally unlawful manner by Respondents Techera and Cabezas; 6) Respondents Grace and Kaweske were negligent in their supervision, hiring and retention of their employees; and 7) Respondent Kaweske failed to discharge or make provision for discharging all of Respondent Grace's liabilities before Respondent Grace's liquidation and dissolution. The causes of action relate to the purchase and sale of shares of Pilgrim Prime Rate Trust, SBS Communications, Avista Corporation, Geron Corp. on margin in Claimants' account.

Unless specifically admitted in his Answer, Respondent Kaweske denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested rescission in the amount of \$120,504.25, a refund of \$2,044.97 in margin interest, a refund of \$5,380.53 in net losses, plus interest, punitive damages, attorney's fees, the costs of this proceeding and such other relief as is deemed just and proper.

Respondent Kaweske requested that all claims against him be dismissed.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents Techera and Grace did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondents Techera and Grace have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Kaweske, Techera, Cabezas, Abramson and Grace did not file with NASD, properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code, and are bound by the determination of the Panel on all issues submitted.

Gabriel Techera and Luca Levi were named as Respondents in this matter. Messrs Gabriel Techera and Levi are not associated persons of member firms of NASD and as such are not subject to the jurisdiction of NASD. Messrs Gabriel Techera and Levi did not voluntarily submit to the jurisdiction of NASD. As such, the arbitrators did not make any findings with regard to these individuals.

On October 2, 2001 the Panel granted the Motions to Dismiss the Statement of Claim filed by Respondents Kaweske and Abramson, without prejudice. On October 15, 2001, Claimants filed an Amended Statement of Claim which asserted additional causes of action against Respondent Kaweske.

On December 5, 2001, the Panel denied Kaweske's Motion to Dismiss the Amended Statement of Claim.

On June 14, 2002, the Panel granted Claimants' Motion for Leave to File a Second Amended Statement of Claim.

On or about November 25, 2002, Claimants informed NASD that they had entered into a settlement agreement with Respondent Cabezas.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies.

### **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. All of Claimants' claims are denied in their entirety.
2. Claimants' requests for relief pursuant to Florida Statutes Chapter 517 are specifically denied.
3. Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
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#### **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. Accordingly, R.K. Grace is a party and was a member firm of NASD until the termination of its membership on May 3, 2001.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

#### **Adjournment Fees**

No adjournments were granted during these proceedings for which fees were assessed.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during this proceeding.

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

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

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences:     October 9, 2001	1 session
February 21, 2002	1 session
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates:           December 4, 2002	2 sessions
December 5, 2002	2 sessions
Total Forum Fees	= \$6,750.00

1. The Panel has assessed \$3,375.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$3,375.00 of the forum fees to Respondent Kaweske.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative fees were incurred during this proceeding.

**Signature Date**

/s/  
John C. Newsom  
Non-Public Arbitrator

Signature Date

January 16, 2003  
Date of Service (For NASD office use only)

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,375.00
<u>Total Fees</u>	<u>= \$3,675.00</u>
<u>Less payments</u>	<u>= \$1,425.00</u>
<u>Balance Due NASD</u>	<u>= \$2,250.00</u>
  
2. Respondent Grace is solely liable for:

Member Fees	= \$4,600.00
<u>Total Fees</u>	<u>= \$4,600.00</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
<u>Balance Due NASD</u>	<u>= \$4,600.00</u>
  
3. Respondent Kaweske is solely liable for:

Forum Fees	= \$3,375.00
<u>Total Fees</u>	<u>= \$3,375.00</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
<u>Balance Due NASD</u>	<u>= \$3,375.00</u>

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Gloria O. North, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard W. Epstein, Esq.	-	Public Arbitrator
John C. Newsom	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Gloria O. North, Esq.  
Public Arbitrator, Presiding Chairperson

1-15-03  
Signature Date

Richard W. Epstein, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

**Fee Summary**

1. Claimants are jointly and severally liable for:  
Initial Filing Fee = \$ 300.00  
Forum Fees = \$3,375.00  
Total Fees = \$3,675.00  
Less payments = \$1,425.00  
Balance Due NASD = \$2,250.00
  
2. Respondent Grace is solely liable for:  
Member Fees = \$4,600.00  
Total Fees = \$4,600.00  
Less payments = \$ 0.00  
Balance Due NASD = \$4,600.00
  
3. Respondent Kaweske is solely liable for:  
Forum Fees = \$3,375.00  
Total Fees = \$3,375.00  
Less payments = \$ 0.00  
Balance Due NASD = \$3,375.00

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Gloria O. North, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard W. Epstein, Esq.	-	Public Arbitrator
John C. Newsom	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**


Gloria O. North, Esq.  
Public Arbitrator, Presiding Chairperson

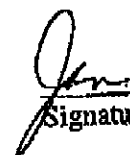
Signature Date

  
Richard W. Epstein, Esq.  
Public Arbitrator

  
January 16, 2003  
Signature Date



  
John C. Newsom  
Non-Public Arbitrator

 15, 2003  
Signature Date

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Date of Service (For NASD office use only)