

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

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In the Matter of the Arbitration Between

Name of Claimants

Kelly Hugh Rule; and  
Rule Construction Inc.

Case No. 00-05690

Name of Respondents

Robby D. Schumacher; and  
Adam Mosslih

Hearing Site: Nashville, Tennessee

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**REPRESENTATION OF PARTIES**

Claimants Kelly Hugh Rule and Rule Construction Inc. were represented by Melanie E. Davis, Esq. of the firm of Kizer and Black, located in Maryville, Tennessee.

Respondent Adam Mosslih was represented by Richard J. Babnick, Jr., Esq., of the firm of Sichenzia, Ross Friedman and Ference LLP, located in New York, New York.

Respondent Robby D. Schumacher did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: December 26, 2000.

Claimants signed the Uniform Submission Agreement: December 18, 2000.

Joint Statement of Answer filed by Respondents on or about: February 20, 2001.

Respondent Mosslih signed the Uniform Submission Agreement: February 20, 2001.

Respondent Schumacher signed the Uniform Submission Agreement: February 20, 2001.

**CASE SUMMARY**

Claimants asserted that after being with the two brokers for approximately ten months, they became extremely aggressive and began making investment decisions without regard to their clients' wishes, trading without authorization and blatantly disregarding specific client trading instructions. These activities occurred in transactions involving IVillage and Audible stock.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants' claims are barred because Rule was aware of all material risks concerning his investments and expressly authorized the transactions which are the subject of this arbitration. Consequently, Claimants assumed the risk of the losses alleged herein;
2. The claims are barred by the doctrines of waiver, estoppel and laches;
3. Claimants were fully informed of the risks, mechanics and use of margin;
4. Respondents actions were in the ordinary course of business, were not wrongful and did not proximately cause any of the damages claimed by the Claimant;
5. Rule is a sophisticated and experienced investor who knowingly directed, authorized and assumed the risk of loss that Claimants allege;
6. Claimants were aware of the investments and the investments were consistent with Rule's articulated investment objectives, experience, sophistication and financial circumstances;
7. Any losses sustained by Claimants are attributable to market conditions and price fluctuations outside the control of Respondents and normally associated with investments in the securities markets;
8. There is no private right of action, and therefore no basis for recovery, based upon NASD or NYSE Rules;
9. Claimants were provided with full and fair disclosure of all material facts concerning transactions executed in the accounts and freely consented to each trade;
10. Respondents were not fiduciaries to Claimant and did not owe him any fiduciary duty;
11. Claimants have failed to state a claim against Respondents upon which relief can be granted;
12. There is no private right of action, and therefore no basis for recovery, for violations of the federal margin rules and regulations;
13. Respondents conducted their business in a professional manner and acted in good faith, without knowledge of or participation in any alleged improper conduct;
14. Respondents executed each and every order placed by Claimant in a promptly, timely and efficient manner; and
15. Rule received all confirmations and account statements and did not timely object to the transactions executed in his accounts. Therefore, he ratified all trades and is estopped from asserting these claims against the Respondents.

**RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$386,154.76
Witness Production Costs	\$ 3,000.00

Respondents requested an award denying all of Claimants' claims.

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

On February 9, 2001, Cambridge Capital LLC, the member firm who employed Respondent Mosslih and Schumacher, had its membership with NASD terminated. In addition, the NASD received notice that the firm was in SIPC liquidation and that all actions were stayed against the firm. Pursuant to these notices, no action was taken against Cambridge Capital LLC.

Initially, both Respondents were represented by the same law firm and a joint answer was filed on their behalf. However, on August 7, 2001, counsel withdrew from representation of Respondent Schumacher and all further. Respondent Schumacher did not appear at the hearing.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators determined that Respondent Schumacher was properly served with the Statement of Claim 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").

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Robby D. Schumacher is liable for and shall pay to the Claimant Rule Construction, Inc. the sum of \$60,857.99 as compensatory damages;
2. In addition, Respondent Adam Mosslih is liable for and shall pay to the Claimant Rule Construction, Inc. the sum of \$45,827.99 as compensatory damages ;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and,
4. Any and all relief not specifically addressed herein is 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	= \$ 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. In this matter, the member firm was the Respondents' former firm, Cambridge Capital LLC.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings: None.

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

The panel has the authority to assess 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 with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: July 10, 2001 1 session	
One (1) Pre-hearing sessions with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: August 21, 2001 1 session	
Four (4) Hearing sessions x \$1,125.00	= \$4,500.00
Hearing Dates: February 19, 2002 2 sessions	
February 20, 2002 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$6,075.00

The panel has assessed \$2,025.00 of the forum fees jointly and severally to Claimants Kelly Hugh Rule and Rule Construction Inc. In addition, the panel has assessed \$2,25.00 of the forum fees to Respondent Adam Mosslih and \$2,025.00 of the forum fees to Respondent Robby D. Schumacher.

#### **EEE SUMMARY**

Claimants Kelly Hugh Rule and Rule Construction Inc. are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,025.00
Total Fees	= \$2,325.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 900.00

Respondent Adam Mosslih is solely liable for:

Forum Fees	= \$2,025.00
Less payments	= \$ .00
Balance Due NASD Dispute Resolution, Inc.	= \$2,025.00

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Respondent Robby D. Schumacher is solely liable for:

Forum Fees	= \$2,025.00
Less payments	= 5.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,025.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Frank E. Barnett - Public Arbitrator, Presiding Chair  
Edward B. Scott - Public Arbitrator  
R. Thomas Barksdale - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Frank E. Barnett  
Public Arbitrator, Presiding Chair

4-4-02

Signature Date

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Edward B. Scott  
Public Arbitrator

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

\_\_\_\_\_  
R. Thomas Barksdale  
Non-Public Arbitrator

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

4/5/02 N/A

Date of Service (For NASD-Dispute Resolution office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 00-05690  
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Respondent Robby D. Schumacher is solely liable for:

Forum Fees	= \$2,025.00
Less payments	= \$ (0)
Balance Due NASD Dispute Resolution, Inc.	= \$2,025.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Frank E. Barnett - Public Arbitrator, Presiding Chair  
Edward B. Scott - Public Arbitrator  
R. Thomas Barksdale - Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Frank E. Barnett  
Public Arbitrator, Presiding Chair

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

Edward B. Scott

Edward B. Scott  
Public Arbitrator

APRIL 4, 2002  
Signature Date

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R. Thomas Barksdale  
Non-Public Arbitrator

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

4/5/02 men

Date of Service (For NASD-Dispute Resolution office use only)

NASD Dispute Resolution, Inc.

Arbitration No. 00-05690

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Respondent Robby D. Schumacher is solely liable for:

Forum Fees	= \$2,025.00
Less payments	= \$ 00
Balance Due NASD Dispute Resolution, Inc.	= \$2,025.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Frank E. Barnett - Public Arbitrator, Presiding Chair

Edward B. Scott - Public Arbitrator

R. Thomas Barksdale - Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Frank E. Barnett  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Edward B. Scott  
Public Arbitrator

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

R. Thomas Barksdale  
R. Thomas Barksdale  
Non-Public Arbitrator

April 4, 2002  
Signature Date

4/5/02 WCN  
Date of Service (For NASD-Dispute Resolution office use only)