

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Tantalus Manor, Ltd., (Claimant) vs. Donald & Co. Securities, Inc. and Benjamin Kaplan,
(Respondents)

Case Number: 01-00624

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant Tantalus Manor, Ltd., hereinafter referred to as "Claimant": Daniel A. Eigerman, Esq.,
a sole practitioner, New York, NY.

Respondent Donald & Co. Securities, Inc. ("Donald"): Barry R. Temkin, Esq., Jacobowitz,
Garfinkel & Lesman, New York, NY.

Respondent Benjamin Kaplan ("Kaplan"): Marc J. Ross, Esq., Sichenzia, Ross, Friedman &
Ference LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: February 7, 2001.

Claimant signed the Uniform Submission Agreement: December 14, 2000.

Statement of Answer filed by Donald on or about: June 7, 2001.

Donald signed the Uniform Submission Agreement: July 27, 2001.

Statement of Answer filed by Kaplan on or about: June 8, 2001.

Kaplan did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trades; negligence; guaranteed profit; breach of fiduciary duty; breach of contract; churning; conversion; violations of the Securities Exchange Act and the rules promulgated thereunder; violations of Rule 2330 of the NASD Rules of Conduct; respondeat superior; and failure to supervise. Claimant's claim involved the stock of Medical Control, Inc., as well as other, unspecified securities.

Unless specifically admitted in its Answer, Donald denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant ratified the transactions complained of in the Statement of Claim; Claimant is barred by the equitable doctrines of estoppel, laches, and unclean hands; Claimant failed to mitigate its damages; Claimant's

claims are barred to the extent of its comparative negligence; and Claimant assumed the risks associated with the transactions of which it now complains.

Unless specifically admitted in his Statement of Answer, Kaplan denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claims are barred because it was aware of all material risks concerning its investments, and it expressly, specifically, and knowingly ordered, approved, directed, and/or authorized the acts and transactions that are the subject of this proceeding and about which it now complains; the Statement of Claim fails to set forth any cause of action against Kaplan for which relief may be granted; pursuant to the applicable law governing the resolution of this dispute and Claimant's Customer Agreement, Claimant is not entitled to seek or recover costs, disbursements, or attorneys' fees; Kaplan's actions were in the ordinary course of business, were not wrongful, and did not proximately cause any of the damages claimed to have been sustained by Claimant herein; Claimant knowingly directed and authorized each transaction and assumed the risk of loss that Claimant alleges herein; any loss sustained by Claimant in its account is wholly attributable to market conditions and price fluctuations outside the control of Respondents and normally associated with investments in the securities markets; Claimant was provided with full and fair disclosure of all material facts concerning each transaction executed in its account and freely consented to each trade; Claimant's claims against Kaplan are barred by the doctrines of waiver, estoppel, and laches; Claimant is estopped by its own conduct from asserting the claims set forth in its Statement of Claim; Kaplan did not violate any applicable law or rule; Kaplan did not breach any fiduciary duty owed to Claimant; at all times, Kaplan conducted his business in a professional manner and acted in good faith, without knowledge of or participation in any alleged improper conduct; Claimant's claims are barred by the applicable statute of limitations; and Claimant ratified all trades in its account and is estopped from asserting these claims now against Kaplan.

RELIEF REQUESTED

Claimant requested:

- a. The sum of Claimant's loss on the account as determined by the Panel but in no event less than \$100,000.00, with interest at the statutory rate of nine percent;
- b. The costs and fees of this proceeding, including Claimant's reasonable attorneys' fees; and
- c. Such other and further relief as the Panel deems just and equitable.

Donald requested that the Statement of Claim be denied in its entirety.

Kaplan requested that the Panel dismiss the Statement of Claim in its entirety as against him, and award him such other and further relief as it deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Kaplan did not file with NASD Dispute Resolution a properly executed submission to

arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the 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.

FINDINGS OF FACT & DETERMINATION

The Panel, having fully considered the testimony, exhibits, and closing arguments, makes the following findings of fact and determination:

1. Claimant is a Canadian corporation which is used as an investment vehicle by its principal owner who is a sophisticated and experienced investor.
2. Claimant opened its account in June 1997, signed an options agreement a month later, and a margin agreement in February 1998. Claimant regularly received its monthly statements eight to nine days into the next month and regularly received confirmations of each trade during the month.
3. The claim is based on unauthorized trades in Claimant's account which were principally made in January and February 2000. We do find unauthorized trades were made.
4. Claimant orally protested these trades on March 9, 2000 to his broker, but did not ask that the trades be rescinded. Claimant's account had increased in value over 12% after the January and February trades and Claimant stated that it wanted the amount of the account to reach \$150,000.00, and the broker should do what he had to do.
5. Claimant threatened to close the account at the end of April if the account did not reach \$150,000.00, but in fact never did close the account.
6. Claimant's assertion that it received a "guarantee" from the broker on a stock's price going from 7 1/2 to 20 by April 30, 2000, and that Claimant relied on it to its detriment, is not credible. As a sophisticated and experienced investor, Claimant had to know that there is no sure thing in the stock market.
7. Claimant was aware toward the latter half of April that its broker had left Respondent Donald and still did not act to rescind the trades or protest.
8. Claimant did not object in writing until June 1, 2000, over one month after it received a margin call dated April 28, 2000.

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. The Panel finds that Claimant ratified the unauthorized trades and the claim is dismissed. Accordingly, Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby 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 = \$ 225.00

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 person at the time of the events giving rise to the dispute. In this matter, Donald & Co. Securities, Inc. 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 arbitrators, including a pre-hearing conference with the arbitrators, 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 23, 2002	1 session

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: February 13, 2002	1 session

Six (6) Hearing sessions x \$750.00	= \$4,500.00
Hearing Dates: November 12, 2002	2 sessions
November 13, 2002	2 sessions
November 14, 2002	2 sessions

Total Forum Fees = \$5,700.00

1. The Panel has assessed \$1,900.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,900.00 of the forum fees against Donald.
3. The Panel has assessed \$1,900.00 of the forum fees against Kaplan.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$1,900.00</u>
Total Fees	= \$2,125.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$1,150.00

2. Donald is solely liable for:

Member Fees	= \$3,100.00
<u>Forum Fees</u>	<u>= \$1,900.00</u>
Total Fees	= \$5,000.00
<u>Less payments</u>	<u>= \$3,100.00</u>
Balance Due NASD Dispute Resolution	= \$1,900.00

3. Kaplan is solely liable for:

<u>Forum Fees</u>	<u>= \$1,900.00</u>
Total Fees	= \$1,900.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,900.00

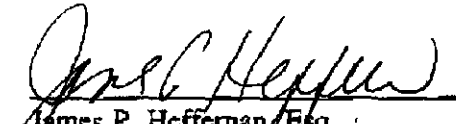
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

James P. Heffernan, Esq.	-	Public Arbitrator, Presiding Chair
Alida D. Camp, JD	-	Public Arbitrator
Salvatore Saladini	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


James P. Heffernan, Esq.
Public Arbitrator, Presiding Chair

12/11/02
Signature Date

Alida D. Camp, JD
Public Arbitrator

Signature Date

Salvatore Saladini
Non-Public Arbitrator

Signature Date

December 18, 2002

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


James P. Heffernan, Esq.	-	Public Arbitrator, Presiding Chair
Alida D. Camp, JD	-	Public Arbitrator
Salvatore Saladini	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

James P. Heffernan, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Alida D. Camp, JD
Public Arbitrator

December 11, 2002
Signature Date

Salvatore Saladini
Non-Public Arbitrator

Signature Date

December 18, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

James P. Heffernan, Esq.	-	Public Arbitrator, Presiding Chair
Alida D. Camp, JD	-	Public Arbitrator
Salvatore Saladini	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

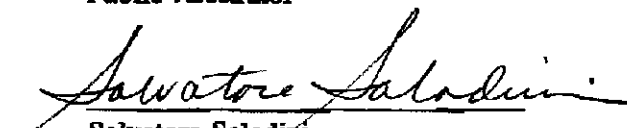
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

James P. Heffernan, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Alida D. Camp, JD
Public Arbitrator

Signature Date



Salvatore Saladini
Non-Public Arbitrator

Signature Date

December 18, 2002

Date of Service (For NASD Dispute Resolution use only)