

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Ivor Katz and Myron Katz, JTWROS, Claimants v. Adolph Komorsky Investments, Peter W. Adolph, and Mark E. Komorsky, Respondents

Case Number: 01-02732

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

For Ivor Katz ("I. Katz") and Myron Katz ("M. Katz"), JTWROS, hereinafter referred to as "Claimants": Sydney E. Hurwitz, B.A., LL.B., Melamed & Hurwitz Inc., Johannesburg, South Africa.

For Adolph Komorsky Investments ("AKI"), Peter W. Adolph ("Adolph"), and Mark E. Komorsky ("Komorsky"), hereinafter referred to as "Respondents": Richard A. Roth, Esq., The Roth Law Firm, PLLC, New York, NY. On March 20, 2003, Mr. Roth withdrew as counsel for the Respondents. Thereafter, Peter W. Adolph appeared on behalf of the Respondents.

CASE INFORMATION

Statement of Claim filed on or about: July 23, 2001.

Claimants' Uniform Submission Agreement signed: July 3, 2001.

Respondent AKI's Answer to the Statement of Claim filed on or about: August 10, 2001.

Respondent AKI's Uniform Submission Agreement signed: July 17, 2001.

Claimants' Motion to Amend the Statement of Claim filed on or about: June 13, 2002.

Claimants' Amended Statement of Claim filed on or about: August 5, 2002.

Respondents' Motion to Dismiss the Amended Statement of Claim filed on or about: August 20, 2002.

Claimants' response to Respondents' Motion to Dismiss filed on or about: September 2, 2002.

Respondents' reply in support of their Motion to Dismiss filed on or about: September 3, 2002.

Claimants' opposition to Respondents' reply in support of their Motion to Dismiss filed on or about: September 4, 2002.

Respondents Adolph and Komorsky did not file an Answer.

Respondent Adolph's Uniform Submission Agreement signed: April 4, 2003.

Respondent Komorsky's Uniform Submission Agreement signed: April 9, 2003.

CASE SUMMARY

Claimants alleged the following causes of action: 1) unsuitability; 2) breach of contract; 3) churning; 4) failure to diversify; 5) breaches of fiduciary duty and duty of good faith; 6)

negligence; 7) fraud; and 8) lack of supervision. The causes of action relate to Respondents' purchase of unspecified securities products.

Unless specifically admitted in its Statement of Answer, Respondent AKI denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested in their Statement of Claim and Amended Statement of Claim: 1) compensatory damages in the amount of \$139,933.50; 2) punitive damages in the amount of \$250,000.00; 3) interest; and 4) costs.

Respondents requested in their Motion to Dismiss, dismissal of the Statement of Claim and their fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On July 9, 2002, the Panel granted Claimants' Motion to Amend the Statement of Claim, and on or about September 4, 2002, the Panel denied Respondents' Motion to Dismiss Claimant's Amended Statement of Claim.

Due to an illness, Claimant I. Katz did not attend the final hearings in this matter.

During the final hearing, Respondents made a Motion to Dismiss Respondents Adolph and Komorsky, to which Claimants objected. The Panel denied the Motion.

The parties 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, 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 Respondents liable for the claims of churning and lack of supervision.
- 2) Respondents are liable, jointly and severally, and shall pay to Claimants compensatory damages in the amount of \$24,000.00, pre-judgment interest specifically excluded. Post-judgment interest shall accrue at the legal rate of interest in the state of New York, from the date of the Award until the date of payment of the Award.
- 3) Any and all claims for relief not specifically addressed herein, including Claimants' request

for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
--------------------------	-------------

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Respondent AKI is a party to this dispute and was an NASD member at the time the following fees were assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

June 19, 2002, adjournment requested by Respondents	= \$ 1,125.00
November 12, 2002, adjournment requested by all parties	= \$ 1,125.00
Total Adjournment Fees	= \$ 2,250.00

The Panel waived the adjournment fee of \$1,125.00 for the June 19, 2002 adjournment.

The Panel assessed an adjournment fee of \$562.50 to Claimants, jointly and severally.

The Panel assessed an adjournment fee of \$562.50 to Respondents, jointly and severally.

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 arbitrator.

Injunctive relief fees were not assessed in this matter.

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

Two (2) Pre-hearing conferences with the Chair @ \$450.00	= \$	900.00
Pre-hearing conferences: October 15, 2002 1 session		
February 10, 2003 1 session		
Four (4) Pre-hearing conferences with the Panel @ \$1,125.00	= \$	4,500.00
Pre-hearing conferences: January 8, 2002 1 session		
May 31, 2002 1 session		
July 9, 2002 1 session		
March 11, 2003 1 session		
Five (5) Hearing sessions with the Panel @ \$1,125.00	= \$	5,625.00
Hearings: April 7, 2003 2 sessions		
April 8, 2003 2 sessions		
April 9, 2003 1 session		
Total Forum Fees	= \$	11,025.00

The Panel assessed forum fees of \$5,062.50 to Claimants, jointly and severally.
The Panel assessed forum fees of \$5,962.50 to Respondents, jointly and severally.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are liable for the following fees and costs, jointly and severally:

Forum Fees	= \$	5,062.50
Adjournment Fees	= \$	562.50
<u>Initial Filing Fee</u>	= \$	300.00
Total Fees	= \$	5,925.00
<u>Less payments</u>	= \$	3,675.00
Balance Due NASD	= \$	2,250.00

Respondent AKI is solely liable for the following fees and costs:

<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,150.00
<u>Balance Due NASD</u>	= \$ 450.00

Respondents are liable for the following fees and costs, jointly and severally:

<u>Forum Fees</u>	= \$ 5,962.50
<u>Adjournment Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 6,525.00
<u>Less payments</u>	= \$ 2,250.00
<u>Balance Due NASD</u>	= \$ 4,275.00

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

ARBITRATION PANEL

<i>Bonnie L. Roddenberry, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Leslie L. Coone, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Sydney I. Josepher</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Bonnie L. Roddenberry, Esq.
Chair, Public Arbitrator

Signature Date

/s/
Leslie L. Cooney, Esq.
Public Arbitrator

Signature Date

/s/
Sydney I. Josepher
Non-Public Arbitrator

Signature Date

April 29, 2003
Date of Service (For NASD office use only)

NASD

Arbitration No. 01-02752

Award Page 5 of 5

Respondent AKI is solely liable for the following fees and costs:

<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,150.00
<u>Balance Due NASD</u>	= \$ 450.00

Respondents are liable for the following fees and costs, jointly and severally:

<u>Forum Fees</u>	= \$ 5,962.50
<u>Adjournment Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 6,525.00
<u>Less payments</u>	= \$ 2,250.00
<u>Balance Due NASD</u>	= \$ 4,275.00

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

ARBITRATION PANEL

Bonnie L. Roddenberry, Esq.

Public Arbitrator, Presiding Chair

Leslie L. Cooney, Esq.

Public Arbitrator

Sydney I. Josepher

Non-Public Arbitrator

Concurring Arbitrators' SignaturesBonnie L. Roddenberry, Esq.
Chair, Public Arbitrator4-28-2003
Signature Date_____
Leslie L. Cooney, Esq.
Public Arbitrator_____
Signature Date_____
Sydney I. Josepher
Non-Public Arbitrator_____
Signature Date_____
Date of Service (For NASD office use only)

NASD

Arbitration No. 01-02732

Award Page 5 of 5

Respondent AKI is solely liable for the following fees and costs:

<u>Member Fees</u>	= \$ 4,600.00
<u>Total Fees</u>	= \$ 4,600.00
<u>Less payments</u>	= \$ 4,150.00
<u>Balance Due NASD</u>	= \$ 450.00

Respondents are liable for the following fees and costs, jointly and severally:

<u>Forum Fees</u>	= \$ 5,962.50
<u>Adjournment Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 6,525.00
<u>Less payments</u>	= \$ 2,250.00
<u>Balance Due NASD</u>	= \$ 4,275.00

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

ARBITRATION PANEL

Bonnie L. Roddenberry, Esq.

Public Arbitrator, Presiding Chair

Leslie L. Cooney, Esq.

Public Arbitrator

Sydney I. Josepher

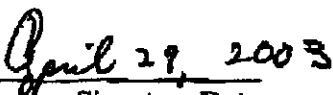
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Bonnie L. Roddenberry, Esq.
Chair, Public Arbitrator

Signature Date


Leslie L. Cooney, Esq.
Public Arbitrator


Signature Date

Sydney I. Josepher
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD
Arbitration No. 01-02732
Award Page 5 of 5

Respondent AKI is solely liable for the following fees and costs:

Member Fees	= \$ 4,600.00
Total Fees	= \$ 4,600.00
Less payments	= \$ 4,150.00
Balance Due NASD	= \$ 450.00

Respondents are liable for the following fees and costs, jointly and severally:

Forum Fees	= \$ 5,962.50
Adjournment Fees	= \$ 562.50
Total Fees	= \$ 6,525.00
Less payments	= \$ 2,250.00
Balance Due NASD	= \$ 4,275.00

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

ARBITRATION PANEL

Bonnie L. Roddenberry, Esq.	-	Public Arbitrator, Presiding Chair
Leslie L. Coone, Esq.	-	Public Arbitrator
Sydney I. Josepher	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Bonnie L. Roddenberry, Esq.
Chair, Public Arbitrator

Signature Date

Leslie L. Cooney, Esq.
Public Arbitrator

Signature Date


Sydney I. Josepher
Non-Public Arbitrator

4.24.03
Signature Date

Date of Service (For NASD office use only)