

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Joseph I. & Edith S. Klein

Claimant

and

Patricia Marika  
Stephen Schwartz  
Austin Davenport Associates, Inc.  
Eastern Capital Securities, Inc.

Respondent(s)

Case #88-02843  
AWARD

CASE SUMMARY

Claimants Joseph I. and Edith S. Klein alleged that Respondents Patricia Marika, Stephen Schwartz, Austin Davenport Associates, Inc., and Eastern Capital Securities, Inc. engaged in deceitful tactics intended to defraud the Claimants. Specifically, the Claimants alleged that Respondent Marika made various misrepresentations concerning the quality of certain securities, and that the Claimants relied on these misrepresentations to their detriment.

Respondent Patricia Marika contended the Claimants were sophisticated investors who authorized all transactions with full knowledge of the risks involved. Marika further contended she made no misrepresentations to the Claimants, and always acted in good faith. Respondent Stephen Schwartz contended the Claimants' account was handled by an experienced registered representative, and that all transactions in their account were properly represented and executed. Respondents Austin Davenport Associates, Inc., and Eastern Capital Securities, Inc. did not file an answer nor appear in this action.

RELIEF REQUESTED

Claimants Joseph I. and Edith S. Klein requested actual damages of \$4,510.06. Respondent Patricia Marika requested dismissal of all claims made against her. Respondent Stephen Schwartz requested dismissal of all claims made against him.

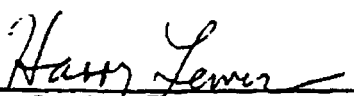
AWARD

On November 1, 1989 and June 22, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Joseph I. and Edith S. Klein on October 26, 1988, by Respondent Patricia Marika on December 13, 1988, by Respondent Steven Schwartz on January 3, 1989, and not by Respondent Austin Davenport Associates, Inc. and Eastern Capital Securities, Inc. as required by Section 12 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure. The initial claim was filed on September 6, 1988. The hearing was conducted at the office of the National Association of Securities Dealers, Inc. in New York City, New York and consisted of two (2) hearing sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. In accordance with Section 25 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, Respondents Austin Davenport Associates and Eastern Capital Securities were served with the pleadings in this matter and given an opportunity to respond; both Respondents failed to respond.
2. In accordance with Section 21 and 26 of the Code, Respondents Austin Davenport Associates and Eastern Capital Securities were given due notice of the hearing dates and procedures; both Respondents failed to appear at the hearing.
3. In accordance with Section 29 of the Code, the arbitrator determined, in light of the foregoing, to proceed with the hearing as if Respondents Austin Davenport Associates and Eastern Capital Securities had entered an appearance in this matter.
4. Respondents Patricia Marika, Austin Davenport Associates, Inc. and Eastern Capital Securities, Inc. be and hereby are jointly and severally liable and shall pay to the Claimants the sum of Five Hundred Dollars And No Cents (\$500.00), inclusive of interest.
5. All claims against Respondent Stephen Schwartz be and hereby are dismissed in their entirety.
6. All parties shall bear their respective costs, including attorney's fees.
7. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$100.00 filing fee previously deposited by the Claimants as costs of the two (2) hearing sessions conducted in this matter.

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ARBITRATOR CONCURRING

  
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Harry Lewis, Esq.

DATED: July 23<sup>rd</sup>, 1990