

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Mike and Kathleen Magioncalda

90-00617

Name of Respondent(s)

Kevin Sullivan  
Philip Falcone

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CASE SUMMARY

Claimants alleged that Respondent Philip Falcone misrepresented units of J.T. Moran Financial Corporation, guaranteed that the Claimants would suffer no losses on the investment of their life savings in this security, and failed to sell the units when requested to do so by the Claimants. Claimants further alleged that the Respondents Philip Falcone and Kevin Sullivan failed to execute the sale of other common stock (Istec Industries & Technologies, Ltd.) when requested to do so resulting in a loss to the Claimants. Respondent Philip Falcone maintained that the Claimants received full disclosure of the securities in which they invested, that the Claimants always decided to maintain their position in the J.T. Moran units, and that he never guaranteed that the position in the J.T. Moran units would increase in value. Respondent Philip Falcone further maintained that any failure to execute the sale of Claimant's common stock in Istec Industries was due to the fact that the bid price for the common stock never reached the limit order price requested by the Claimants. Respondent Kevin Sullivan maintained that the Claimants were not his clients, and any quotes made by him to the Claimants were direct responses from the back office of J.T. Moran.

RELIEF REQUESTED

Claimants requested damages in the amount of \$49,066.87. Respondents Philip Falcone and Kevin Sullivan requested that the claims of the Claimants be dismissed.

AWARD

On November 29, 1990 in a pre-hearing conference, and on December 5, 1990 in New York City, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimants Mike and Kathleen Magioncalda on February 22, 1990, by Respondent Philip Falcone on October 9, 1990, and not signed by Respondent Kevin Sullivan as required by Sections 12 and 25 of the Code of Arbitration Procedure. The initial Statement of Claim was filed on March 1, 1990. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of all issues submitted for determination as follows:

(1) Respondent Philip Falcone is liable and shall pay to the Claimants Mike and Kathleen Magioncalda the sum of Thirty Thousand Dollars and No Cents (\$30,000.00).

(2) The Claimants' claim against Respondent Kevin Sullivan be and hereby is dismissed.

(3) The parties shall each bear their respective costs, including attorneys' fees.

(4) Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$750.00 filing fee initially deposited by the Claimants and hereby assesses Respondent Philip Falcone the sum of \$500.00 in forum fees made payable to the NASD, Inc. as costs of the three hearing sessions conducted in this matter.

/s/

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Milton Lehrer

/s/

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Anne Cugliani

/s/

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Karen Van Ingen

Dated: February 1, 1991