

Arbitration

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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

In the Matter of the Arbitration Between

Name of Claimant(s)

Arnold Lett

90-00870

Name of Respondent(s)

Graystone Nash, Inc.  
Robert Rock  
Kathleen Rock  
Thomas Ackerly  
Neil Goldwasser

REPRESENTATION

For Claimant, Arnold Lett ("Lett"): Russell L. Forkey, Esq. of The Law Offices of Russell L. Forkey.

For Respondents, Graystone Nash, Inc. ("Graystone") and Thomas Ackerly ("Ackerly"): Lester Morse, Esq. of The Law Offices of Lester Morse.

For Respondents, Robert and Kathleen Rock ("the Rocks"): Kenneth Lipton, Esq. of Siegel & Lipton.

Respondent, Neil Goldwasser ("Goldwasser") was pro se.

CASE INFORMATION

Statement of Claim filed: March 23, 1990 and amended on April 11, 1990.  
Claimant's Submission Agreement signed: April 5, 1990.

Respondents, Graystone and Ackerly's, Statement of Answer filed: June 8, 1990. Respondents' Submission Agreement signed by Ackerly on June 6, 1990, and by Ackerly on behalf of Graystone on June 6, 1990.

Respondents, the Rocks', Statement of Answer filed: August 3, 1990. Respondents Submission Agreements signed by the Rocks on August 2, 1990.

Respondent, Goldwasser, failed to file an Answer. Respondent, Goldwasser's Submission Agreement signed on January 10, 1991.

### HEARING INFORMATION

On January 10, 1991, February 4 and 5, 1992, in Fort Lauderdale, Florida, hearings lasting six (6) sessions were conducted.

### CASE SUMMARY

Claimant, alleged that Respondents were liable for: fraud and deceit; negligence, and breach of fiduciary duties.

Claimant alleged that Respondents misrepresented the safety of certain stocks and other securities; that these investments were unsuitable for Claimant in light of his investment objectives; and that Respondents manipulated the market in these various securities.

Respondents, Graystone and Ackerly, denied all allegations of wrongdoing and alleged that: Claimant's losses were due to his own decision to hold the stocks; there was an active market in these securities until Graystone commenced voluntary liquidation; Claimant's account was nondiscretionary; Lett failed to mitigate his damages; Lett was aware of the speculative nature of his investments; and Ackerly, as a corporate officer, has no personal liability for the payment of any debts due from Graystone.

Respondents, the Rocks, alleged that: Mr. Rock never instructed Goldwasser to lend Claimant any money; Claimant was a sophisticated investor who was aware of the risks involved; Graystone was not the only market maker for the securities; Claimant was not prevented from contacting the companies in which he purchased stock; neither of the Rocks ever recommended that Claimant buy or sell any stock; neither of the Rocks has any knowledge of any market manipulation; and Ms. Rock was not an Assistant Manager of the Deerfield Beach office of Graystone and never conducted a sales meeting. The Rocks adopted the affirmative defenses of Respondents Graystone and Ackerly.

### RELIEF REQUESTED

Claimant requested damages in excess of \$36,000.00 plus punitive damages of \$10,000.00 plus interest and costs.

Respondents, Graystone, Ackerly and the Rocks, requested dismissal of the claim.

### OTHER ISSUES CONSIDERED & DECIDED

1. Respondent, Goldwasser, filed for bankruptcy and, therefore, he was dismissed from this case, without prejudice, pursuant to the automatic stay provisions of the bankruptcy code.

2. Jurisdiction over Respondents, Ackerly and Graystone, exists pursuant to Section 12 of the Code and pursuant to the form U-4 executed by Respondent, Ackerly.

3. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this Panel finds service upon adequate Notice to Respondents, Graystone and Ackerly. The NASD had made every attempt to locate and serve Respondents, Graystone and Ackerly with Notice of this hearing as demonstrated by the evidence contained in Arbitrators Exhibit #2.

4. Claimant and the Rocks have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, Claimant and the Rocks have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

#### AWARD

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

1. Respondents, Graystone, Ackerly, and the Rocks, are found liable, jointly and severally, all shall pay to the Claimant the amount of \$41,812.00 inclusive of interest.

2. Respondent, Ackerly, is also found liable for damages and shall pay to Claimant the further amount of \$10,000.00. This Panel finds that there was evidence of price manipulation and fraud on the part of Ackerly so as to warrant an Award of punitive damages. This Panel bases its authority to Award punitive damages on the Federal Arbitration Act and the case law which interprets that Act as it relates to punitive damages.

#### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,400.00 (6 sessions x \$400.00 per session). Respondents, Graystone, Ackerly, and the Rocks, are hereby assessed \$2,400.00, jointly and severally, \$280.00 of which shall be paid directly to the Claimant, and \$2,120.00 of which shall be paid to the National Association of Securities Dealers, Inc. Additionally, Respondents, Graystone, Ackerly, and the Rocks, are hereby assessed and shall pay directly to Claimant the \$120.00 filing fee previously deposited by the Claimant. The NASD, Inc. shall retain the \$400.00 paid by the Claimant in partial satisfaction of such fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Public/Industry

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George R. Canty, Jr., Esq.

Public

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Harry Polansky

Public

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Leslie Bishop

Industry

Date of Decision: March 12, 1992