

N.A.S.D. AWARD**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Arthur L. Berman

90-03001

Name of Respondents

Todd J. Colarusso
Ryan Beck & Co.

PUBLICREPRESENTATION

For Claimant Arthur L. Berman ("Claimant"): David S. Mack, of Hersh, Ramsey et al.

For Respondent Todd J. Colarusso ("Colarusso"): Mr. Colarusso represented himself.

For Respondent Ryan Beck & Co. ("Ryan"): William Thompson, of Ryan.

CASE INFORMATION

Statement of Claim filed: October 19, 1990.

Claimant's Submission Agreement signed on: September 24, 1990.

Statement of Answer filed by Respondent Colarusso on: As required, pursuant to Section 25 of the Code of Arbitration Procedure ("Code"), he did not file a Statement of Answer; however, Colarusso did file a letter alleging that the NASD does not have jurisdiction over him. At the hearing Colarusso stated he was present voluntarily and was prepared to abide by this panel's rulings and determinations.

Respondent Colarusso's Submission Agreement signed on: As required, pursuant to Section 12 of the Code, he did not execute this document.

Statement of Answer filed by Respondent Ryan on: there was no date on this document; however, it was received by the NASD on December 7, 1990.

Respondent Ryan's Submission Agreement signed on: As required, pursuant to Section 12 of the Code, it did not execute this document correctly. However, a representative of Ryan asserted, on the record at the hearing, that Ryan was present voluntarily and that it would abide by this panel's rulings and determinations.

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AWARD
#90-03001
Page Two

HEARING INFORMATION

Hearing Dates/Sessions: March 5, 1992/3 sessions.
April 22, 1992/2 sessions.
Hearing Location: NASD, New York City, NY.

CASE SUMMARY

Claimant alleged Colarusso advised him that Ryan had taken a major position in Filmstar, Inc. ("Filmstar") and that Ryan was making available small lots of the stock and warrants to a few preferred businessmen in New Jersey. Claimant alleged he purchased 3,000 shares of Filmstar based upon Colarusso's representations. Claimant further alleged he purchased warrants as well. Claimant alleged Colarusso told him Ryan recommended all shareholders to purchase additional shares and warrants of Filmstar but that all purchases be made through brokers other than Ryan. Claimant alleged he purchased more shares and warrants of Filmstar from Dean Witter Reynolds, Inc. Claimant alleged Colarusso arranged for him to meet with the Chairman of the Board of Filmstar. Finally, Claimant alleged Ryan and Colarusso engaged in misleading practices with regard to the sale of stock and warrants and that false representations were made as to the position and prospects of Filmstar.

Respondent Colarusso did not submit a formal Statement of Answer; however, at the hearing he maintained he made no misrepresentations regarding Filmstar; the investment was suitable for Claimant; he was a responsible broker; Claimant initiated the purchases with Dean Witter Reynolds, Inc. through his own accord, not with Colarusso's recommendations; and that Claimant continued to deal with him even after Filmstar began to drop in value.

Respondent Ryan alleged it never took a position with or made a market in Filmstar; it never made available lots of stock and warrants to preferred businessmen; nor did it endorse the purchase of Filmstar. Ryan maintained Colarusso never informed Claimant it had taken a position with Filmstar; that it recommended additional purchases of Filmstar; or that Ryan suggested future purchases of Filmstar be made through brokers other than Ryan. Ryan asserted Claimant's purchases were not induced by misleading representations attributable to Ryan; Claimant made all decisions regarding his investment in Filmstar; and that Claimant attended an informational meeting with the Chairman of Filmstar and had the opportunity to question him.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$54,777.40; treble damages; costs; interest and attorneys' fees.

Respondent Colarusso requested: he made no formal plea for relief.

AWARD
#90-03001
Page Three

Respondent Ryan requested: Claimant was not entitled to recover \$54,777.40; treble damages; costs; interest; and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Pursuant to the by-laws of the NASD, this panel has determined that Respondents Colarusso and Ryan were required to submit to this arbitration, and therefore, are bound by this panel's rulings and determinations.

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 Todd J. Colarusso and Ryan Beck & Co. are liable, jointly and severally, in the amount of \$5,000.00;
- 2- All other claims are dismissed;
- 3- Each party shall bear its own expenses, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable filing fee previously paid by Claimant and the following Forum Fees are assessed.

5 sessions X \$750.00 = \$3,750.00 minus hearing session deposit of \$750.00 = net \$3,000.00 due.

Forum fees Assessed Against:

- 1- Respondent, Ryan Beck & Co., in the amount of \$3,000.00. In addition, Respondent Ryan Beck & Co. shall reimburse Claimant the amount of \$950.00 to represent the non-refundable filing fee and hearing session deposit

AWARD

#90-03001

Page Four

previously deposited.

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

Concurring Arbitrators' Signatures


John E. McCracken
John E. McCracken/Public Arbitrator

Date of Decision: May 12, 1992

AWARD
#90-03001
Page Four

previously deposited.

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Concurring Arbitrators' Signatures

A handwritten signature in dark ink, appearing to read "Stuart M. Berkman", is written over a horizontal line.

Stuart M. Berkman/Public Arbitrator

Date of Decision: May 12, 1992

AWARD
#90-03001
Page Four

previously deposited.

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Concurring Arbitrators' Signatures


Henry F. Mimmerop/Industry Arbitrator

Date: May 12, 1992