

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Philip Kaplan

90-03427

Name of Respondents

Royce Park Investments, Inc.
David DeWind

REPRESENTATION

For Claimant: Donald L. Summer, Esq. a sole practitioner.

For Respondent, David DeWind: Timothy J. O'Connor, Esq. of Ainsworth Sullivan.

Respondent, Royce Park Investments, Inc. did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: November 27, 1990.

Claimant's Submission Agreement signed on: November 27, 1990.

Statement of Answer and Counterclaim filed by Respondent, David DeWind on: February 15, 1991.

Respondent, David DeWind's Submission Agreement signed on: February 12, 1991.

Claimant's Reply to Counterclaim filed March 18, 1991.

Respondent, Royce Park Investments, Inc. did not submit an executed Submission Agreement or a Statement of Answer.

HEARING INFORMATION

Pre-Hearing Conference: August 20, 1992 - One Session.

Hearing Date/Sessions: November 4, 1992 - Two Sessions.

Hearing Location: Hyatt Regency - Buffalo, New York.

CASE SUMMARY

Claimant alleges that the Respondents fraudulently induced the Claimant to purchase securities and that the Respondents converted the funds of the Claimant. Claimant alleges that the respondents admitted fault but failed to pay the monies owed to Claimant. Claimant alleges that Respondents executed unauthorized trades and that they misrepresented material investment information, including the status of Claimant's account. Claimant alleges that Respondents churned his account with unsuitable stock trades.

Respondent, David DeWind ("DeWind") denies that he ever handled financial accounts of any nature of the Claimant. DeWind denies ever acting in any manner to fraudulently induce Claimant to purchase securities. DeWind denies that he ever assumed authority to make any trades for the Claimant. DeWind denies converting Claimant's funds or stock and denies admitting to any wrongdoing of any nature. DeWind denies having any responsibility or knowledge of unsolicited or unauthorized trades or fraudulent misrepresentations of material information or churning in Claimant's account.

DeWind asserts in his Counterclaim that Claimant engaged in libel, slander, slander per se and malicious prosecution. DeWind alleges that Claimant intentionally inflicted emotional harm and damaged his business reputation. Claimant denied the allegations in Dewind's Counterclaim.

RELIEF REQUESTED

Claimant requested damages in the amount of \$100,000.00 plus interest.

Respondent, DeWind requested damages on his Counterclaim in the amount of \$1,000,000.00 plus costs, disbursements, attorney's fees and assessment of forum fees against the Claimant.

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.

Respondent, Royce Park Investments, Inc. did not file an executed Submission Agreement, nor did they submit and Answer to the Claim. The panel found that Royce Park Investments, Inc. was not served in accordance with Section 25 of the Code of Arbitration Procedure. In addition, the panel found that Royce Park Investments, Inc. did not have adequate notice of the hearing pursuant to Section 26 of the Code of Arbitration Procedure. Accordingly, the panel determined that the Claim could not proceed against Royce Park Investments, Inc.

AWARD

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

1. Claimant's Claim is hereby denied in its entirety.
2. Respondent, David DeWind's Counterclaim is hereby denied in its entirety.
3. Each party shall bear their respective costs of this action, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

\$150.00 Non-refundable filing fee for Claim
\$500.00 Non-refundable filing fee for Counterclaim
\$300.00 Pre-hearing Conference fee
\$1,000.00 Hearing Session Fees (\$500.00 x 2 Sessions)

1. The NASD shall retain the non-refundable filing fee of \$150.00 deposited by the Claimant.
2. The NASD shall retain the non-refundable filing fee of \$500.00 deposited by the Respondent, David DeWind.
3. The balance of the forum fees, in the amount of \$1,300.00 is hereby assessed equally against Claimant and Respondent, David DeWind.
4. Accordingly, Claimant is assessed the amount of \$650.00. Claimant shall be entitled to offset this amount with the \$500.00 hearing session deposit previously paid to the NASD. Claimant is directed to pay the balance of \$150.00 to the NASD, Inc.

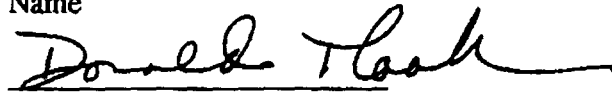
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5. Respondent, is hereby assessed the amount of \$650.00. Respondent is entitled to offset this amount with the \$1,000.00 hearing session deposit previously paid to the NASD, Inc. Accordingly, Respondent, David DeWind is entitled to a refund of \$350.00 from the NASD, Inc.

Concurring Arbitrator's Signature

Name

A handwritten signature in cursive script, appearing to read "Donald T. Cook", written over a horizontal line.

Donald T. Cook, Esq.

Public Chairperson

Date of Decision: May 18, 1993

STATE OF New York ss.:

COUNTY OF Erie

On this 10th day of May 1993, before me personally appeared Donald T. Cook, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

DIANE E CAMERON

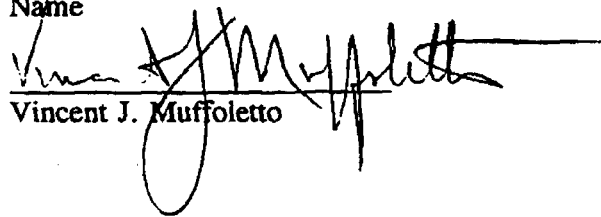
DIANE E. CAMERON
Notary Public, State of NY
Qualified in Erie County
My Commission Expires April 14, 1994

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5. Respondent, is hereby assessed the amount of \$650.00. Respondent is entitled to offset this amount with the \$1,000.00 hearing session deposit previously paid to the NASD, Inc. Accordingly, Respondent, David DeWind is entitled to a refund of \$350.00 from the NASD, Inc.

Concurring Arbitrator's Signature
Name


Vincent J. Muffoletto

Public Arbitrator

Date of Decision: May 18, 1993

STATE OF New York ss.:

COUNTY OF Seneca

On this 10th day of May 1993, before me personally appeared Francis G. Leonard to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Paula M. Munn

PAULA M. MUNN
Notary Public, State of New York
Qualified in Seneca County
My Commission Expires 4-1-94

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5. Respondent, is hereby assessed the amount of \$650.00. Respondent is entitled to offset this amount with the \$1,000.00 hearing session deposit previously paid to the NASD, Inc. Accordingly, Respondent. David DeWind is entitled to a refund of \$350.00 from the NASD, Inc.

Concurring Arbitrator's Signature
Name


Francis G. Leonard

Industry Arbitrator

Date of Decision: May 18, 1993

STATE OF New York ss.:
COUNTY OF Erie

On this 13th day of May 19 93, before me personally appeared Vincent J. Muffoletto to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Lucille A. Appolito
Notary Commissioner - Erie
May 31, 1994.