

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

Marsha H. Klein

vs.

Case #
91-01074

Name of Respondents

Descap Securities, Inc.
Joseph H. Clinard
Daniel Robert Levy

REPRESENTATION

For Claimant, Marsha H. Klein, Brian A. Carlis, Esq. of Stark & Stark.

For Respondents, Descap Securities, Inc. and Michael Charles Cammarota, Evan L. Gordon, Esq.

For Respondents, Joseph Clinard and Daniel Robert Levy, David Haberman, Esq. and Jason Ford, Esq. of David Haberman, P.C.

CASE INFORMATION

Statement of Claim filed on April 4, 1991.

Claimant's Submission Agreement signed on March 27, 1991.

Statement of Answer filed by Respondent, Descap Securities, Inc., on June 6, 1991.

Respondent's Submission Agreement signed on June 3, 1991.

Statement of Answer filed by Respondent, Michael C. Cammarota on December 16, 1991.

Respondent's Submission Agreement signed on December 13, 1991.

Statement of Answer filed by Respondent Joseph H. Clinard dated June 27, 1991.

Respondent's Submission Agreement signed on July 8, 1991.

Statement of Answer filed by Respondent, Daniel Robert Levy is undated.
Respondent's Submission Agreement signed on December 5, 1992.

Statement of Answer filed by North Ridge Securities dated June 27, 1991.
Respondent's Submission Agreement signed on July 25, 1991.

HEARING INFORMATION

Hearing Dates/Hearing Sessions: May 7, 1992 - Two sessions
May 8, 1992 - Two sessions
May 12, 1992 - Two sessions.

Hearing Location: New York, New York.

CASE SUMMARY

Claimant alleges that as a result of a surgical accident in 1975, she was left a paraplegic and received a net lump sum settlement of \$643,000.00 in March, 1987. Claimant alleges that she had no prior investment experience and that her investment objectives were current income commensurate with preservation of principal. Claimant further alleges that she was completely dependent upon the income generated from her investment in order to meet her numerous medical and day-to-day living expenses.

Claimant further alleges that she was referred to Joseph H. Clinard, who presented himself as a Registered Investment Advisor, Certified Financial Planner and Registered Representative with Descap Securities, Inc. Claimant contends that he recommended an investment plan which was totally unsuitable in light of Claimant's investment objectives, deviated from the plan, misrepresented the risks involved in the investments and violated numerous NASD Rules of Fair Practice. Claimant contends that Clinard breached his fiduciary duties and that Descap, the broker-dealer responsible for supervising Clinard failed to do so.

Claimant contends that Clinard only recommended stock and bond mutual funds such as Alliance Central High-Yield Portfolio and Keystone Series B-4 Funds which were junk bonds funds. Claimant also alleges that Clinard exposed twenty eight percent of her portfolio to Mackenzie Option Income Fund, Keystone Series K-1 Funds, Alliance Capital High Yield junk bond fund and into Krupp Cash Plus III limited partnership. Claimant further alleges that Clinard deviated from the investment plan when he liquidated \$20,000.00 of Keystone Series B-1 Fund, a suitable conservative government bond fund to purchase Keystone Precious Metals fund. Claimant further contends that this mode of investment placed her entire portfolio at risk to market fluctuation.

Claimant states that in 1989 and 1990, her portfolio gradually declined in value and that in October, 1990, Clinard left Descap to start his own firm, North Ridge Securities Corp., and solicited the transfer of her account. Claimant also states that she declined to do so but her December, 1990 statement listed North Ridge as her broker dealer, contrary to her wishes.

Respondent, Descap Securities, Inc. and Michael C. Cammarota, allege that Joseph H. Clinard, Jr. and Daniel R. Levy were the president and vice president, respectively, of Descap from 1983 until September, 1990. Respondents further allege Messrs. Clinard and Levy left the firm and became

co-founders of North Ridge Securities, Inc. Respondents also allege that Mr. Clinard was not only president but also the General Principal and Compliance Officer for the firm. Respondents further state that the firm's files do not reveal any complaints made by Claimant.

Respondents, Descap and Mr. Cammarota, further state that Descap is now under new management and should not be held liable for the actions of its former principal.

Respondent, Joseph Clinard, Jr., denies liability and contends that the investment recommendations were consistent with Claimant's investment objectives as she explained them in early 1987. Respondent argues that he took particular care to offer her a portfolio of diversified and professionally managed mutual fund to limit market risks and achieve her objectives. Respondent argues that several of the funds recommended carried no front-end sales charges and all other funds suggested were low-load funds. Respondent contends that prior to the investment recommendations, he fulfilled all due diligence requirements. Respondent further contends that had Claimant held the original portfolio as she said she would, she would have made money. Respondent contends that it was Claimant's impatience that led to her losses and he should not be held liable for the losses.

Respondent alleges that Claimant's employer who was long-time friend of his family asked him to contact Claimant to discuss investments. Mr. Clinard alleges that he met Claimant at her apartment in the evening after she returned from work, a handbag manufacturing company. Mr. Clinard alleges that Claimant appeared quite active and indicated that she was proud that her handicap did not prohibit her from functioning.

Mr. Clinard states that Claimant wanted to invest most of the money for her retirement because her salary, Social Security benefits and the interest earnings from the bank were grossly inadequate to meet her extraordinary high expenses and to allow her to save for the future and her retirement. Mr. Clinard maintains that he told her that while she could achieve higher investment income and long-term growth in the securities market, she would face high risks than she was enjoying with bank certificates or money market accounts. He further states that Claimant's investment objectives were growth and income but with a consideration of safety of principal as a secondary objective and he suggested a well-diversified portfolio whereby fifty percent of her money would be invested into professionally managed mutual funds that had fixed income investments in U.S. Government Treasury Bonds, Notes, Bills, GMA's and cash equivalents or investment-grade corporate bonds where the dividends would be paid to her on a monthly basis or reinvested into the fund. Additionally, to provide long-term capital appreciation with dividends and capital gain distribution, Respondent states that he recommended that a lesser portion of the portfolio be invested into a balanced mutual fund with proven performance and a steady moderately high dividend policy and to a lesser degree a mutual fund of convertible bonds and preferred stock to achieve both income and capital appreciation potential as well as other funds.

Mr. Clinard states that Claimant informed him that she did not intend to draw on her principal except a small amount to use as down payment on a townhouse, and to use the dividend income to supplement her other income and help offset her high living expenses. Mr. Clinard further states that as a result he developed a long-term portfolio. Mr. Clinard maintains that he gave Claimant prospectus for each investment. In 1988, Claimant informed Mr. Clinard that she was dissatisfied with the low income that the portfolio was generating and was unhappy with the performance of the stock fund and was able to exchange the Precious Metals Holdings Fund to the Keystone Series B-4 without being charged commissions.

Mr. Clinard further states that Claimant deviated from her objective and wanted check-writing privileges on her principal. Later, Mr. Clinard alleges that she instructed him to open a margin account at a correspondent broker and he has not seen her statement since that time. Mr. Clinard further alleges that Claimant then instructed him to liquidate her Krupp Real Estate Limited Partnership at \$18.50 per unit instead of at the market. Respondent contends that the units ranged between \$16.00 and \$18.20 and her units were not sold and she continued to receive quarterly dividend of \$935.00.

Mr. Clinard states that he had regular meetings with Claimant and in September of 1990 he advised all of his clients that he would be starting a new broker-dealer and would batch-dealer transfer all mutual fund accounts with him so that he could receive statements and monitor their accounts. Mr. Clinard contends that none of his clients objected, including Claimant. Respondent contends that North Ridge did not solicit business prior to the effective date of its registration in New Jersey.

Mr. Clinard alleges that subsequently Claimant's account statement showed that her remaining Alliance High Yield Fund shares were liquidated and he contacted her to verify the contents statement. Respondent alleges that Claimant indicated that she did not wish to hold the investment any longer because of the decline in value and that she told the Fund to liquidate her holdings. Mr. Clinard states that he told her that she should not have liquidated the shares because the fund would rebound, which it did.

Respondent, Daniel Robert Levy, denies knowledge of the allegation and denies that he failed to exercise due diligence or properly supervise Joseph Clinard. Mr. Levy contends that if Claimant has not altered her investment plan, she would have enjoyed a yield greatly in excess of the Treasury Bill recommended by her attorney.

RELIEF REQUESTED

Claimant requests an award of \$188,945.00 for capital losses incurred from March, 1987, and December, 1990, \$78,347.00 for opportunity cost loss; \$22,675.00 commissions charged, \$8,817.00 in interest plus \$200,000.00 in punitive damages.

All Respondents request that the claims be dismissed in their entirety. Respondent Levy further requests that he receive an award of costs and attorney's fees and for such other, further and different relief that this panel may deem just, proper and equitable.

OTHER ISSUES CONSIDERED AND 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 received conformed copies of the Award while the originals remain on file with the NASD.

Prior to the commencement of the hearing, Claimant withdrew her claims against North Ridge Securities, Inc.

By letter dated May 5, 1992, Claimant counsel advised the NASD that the claims against Michael C. Cammarota were dismissed.

AWARD

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

1. Claimant failed to prove her case. Therefore, all claims asserted by Claimant against Respondents are denied in their entirety;
2. All other claims and counterclaims are also denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. Forum fees in the amount of \$4,500.00 for six hearing sessions at \$750.00 per session (6 sessions X \$750.00 = \$4,500.00) are assessed and shall be borne equally by Claimant, Descap Securities, Joseph Clinard, Jr. and Daniel R. Levy so that each party is assessed \$1,125.00;
2. Claimant is further assessed a non-refundable filing fee of \$250.00. Claimant previously deposited \$950.00 with the NASD and shall receive credit for that amount. Therefore, the balance due by Claimant is \$375.00.

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

Page 6
91-01074.Award

Concurring Arbitrator's Signature

Name

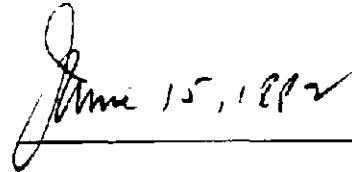


James R. Madan

Industry

Executed on

~~DATE OF EXECUTION:~~

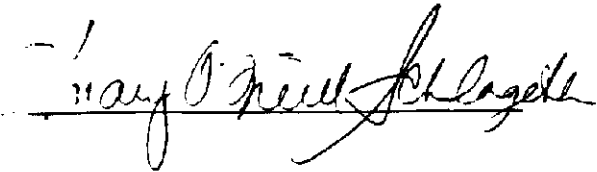
 June 15, 1992

Date of Decision: June 19, 1992

STATE OF NEW YORK
COUNTY OF NEW YORK

s.s.:

On this 16th of June, 1992, before me personally appeared JAMES R. MADAN known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



MARY O'NEILL SCHLAGETER
NOTARY PUBLIC, State of New York
No. 010N4825805
Qualified in Westchester County
Commission Expires March 30, 1994

Page 6
91-01074.Award

Concurring Arbitrator's Signature

Name



Robert D. Owen, Esq.
Chairperson - Public

~~Date of Decision:~~

June 12, 1992

Date of Decision:

June 19, 1992

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Robert D. Owen, do hereby affirm upon my oath
as arbitrator that I am the individual described in and who
executed this instrument, which is my award.

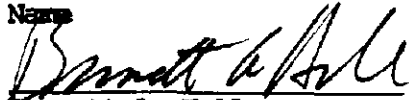
June 12, 1992
Dated

Robert D. Owen
Robert D. Owen

Page 6
91-01074.Award

Concurring Arbitrator's Signature

Name



Bennett A. Hall
Public

Executed on

~~Date of Decision:~~

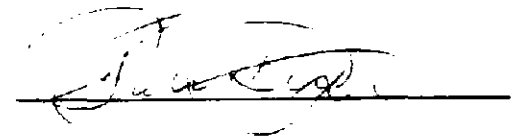
June 15, 1992

Date of Decision: June 19, 1992

STATE OF NEW YORK
COUNTY OF NEW YORK ~~WESTCHESTER~~

S.S.:

On this ^{15th} of June, 1992, before me personally appeared BENNETT A. HALL known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



PATRICIA BEYER
Notary Public, State of New York
No. 4873478
Qualified in Westchester County
Commission Expires September 22, 1992