

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
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(305) 522-7391

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Ralph &amp; Jean Iapichino )

Case No. 91-01310

Name of Respondent(s) )

Guardian International Securities Corp. )

Mike Kelly )

Jaime S. Gomez )

Lou Sitaras )

Kenneth Cutler )

REPRESENTATION

For Claimants, Ralph and Jean Iapichino ("Iapichino"): Patricia A. Shub of  
Patricia A. Shub, P.A.

For Respondents Guardian International Securities Corp. ("Guardian"): pro  
se.

Respondent, Mike Kelly ("Kelly"): pro se.

Respondent, Jaime S. Gomez ("Gomez"): pro se.

Respondent, Lou Sitaras ("Sitaras"): pro se.

Respondent, Kenneth Cutler ("Cutler") pro se.

CASE INFORMATION

Statement of Claim filed: April 25, 1991. Claimants Submission Agreement  
signed: April 19, 1991.

Respondents' Guardian; Kelly; Gomez and Sitaras' Statement of Answers filed:  
April 28, 1992. Respondent, Cutler's, did not file an Answer.

Respondents' Guardian, Kelly, Gomez and Cutler did not file Submission  
Agreements as required by Sections 12 and 25 of the Code.

HEARING INFORMATION

On September 2, 1992, in Fort Lauderdale, Florida, a hearing lasting one  
session was conducted.

WARD-891-01310

CASE SUMMARY

Claimants alleged that they were unsophisticated investors when, in April of 1989, they were encouraged by Respondent, Kelly, through various misrepresentations and omissions, to open accounts with him. Claimants alleged that despite their stated investment objectives of preservation of capital and low risk, Respondents churned their accounts and engaged in the purchase of unsuitable securities for their accounts. Claimants maintained that Respondents breached their fiduciary duty toward them through their gross negligence and reckless disregard for Claimants' interests. Claimants alleged that through Respondents' wrongful acts they have incurred substantial financial losses.

Respondents, Guardian, Kelly, Gomez and Sitaras, denied all allegations of wrongdoing and maintained that Claimants failed to state a claim upon which relief can be granted against them and stated that upon opening the accounts at issue Claimants executed New Customer Account Cards which disclosed that Claimants reported income in excess of \$50,000 and estimated net worth in excess of \$500,000 and that Ralph Iapichino had investment experience and had worked at Merrill Lynch and held a responsible position as a Food Director at a medical facility. Respondents further maintained that none of Claimants' accounts were discretionary in nature and that at no time did Respondents control the trading or trading decisions made for Claimants' accounts and that Claimants, therefore, are responsible for their own trading decisions. Respondents contended that Claimants failed to mitigate their damages and that Claimants' losses were caused by market action which could not be controlled by Respondents.

Respondent, Cutler, did not submit a Statement of Answer (see Other Issues).

RELIEF REQUESTED

Claimants requested an Award of \$246,000.00 including interest costs and attorneys' fees.

Respondents requested dismissal of the claim (all except Cutler who did not submit a Statement of Answer).

OTHER ISSUES CONSIDERED & DECIDED

Respondents, Guardian, Kelly, Gomez Sitaras and Cutler, did not appear nor did they submit executed Submission Agreements. Based upon the evidence submitted in Arbitrator's Exhibit No. 1 regarding hearing notices to the parties, this arbitration panel found that proper notice existed as well as jurisdiction pursuant to Section 12(a) of the Code of Arbitration Procedure over Respondents, Guardian, Kelly, Gomez Sitaras and Cutler. Pursuant to Section 29 of the Code of Arbitration Procedure and based upon evidence in Arbitrator's Exhibit No. 1 this arbitration panel proceeded with the hearing in their absence.

MSRD-891-01310

MSRD

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

1. Respondents, Guardian International Securities, Corp., Jamie S. Gomez, Lou Sitaras and Mike Kelly are found liable, jointly and severally, and shall pay to Claimants the amount of One Hundred and Seventy Six Thousand Seven Hundred Thirty One Dollars and Thirty Eight Cents (\$176,731.38), including interest;
2. Respondent, Kenneth Cutler, is also found liable and shall pay to the Claimants the amount of Twenty Four Thousand Dollars and No Cents (\$24,000.00), including interest;
3. Respondent, Mike Kelly, shall pay to Claimants the further amount of Forty Thousand Dollars (\$40,000.00) including interest;
4. Claimants' requests for reimbursement of attorney's fees and costs shall be decided by a court of competent jurisdiction.


FORUM FEES

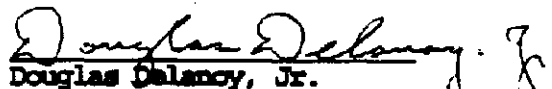
Pursuant to Section 43c of the Code of Arbitration Procedure, of the NASD the Panel has assessed forum fees in the amount of \$750.00 (One (1) hearing session X \$750.00).


Claimants are hereby assessed forum fees of \$750.00 for which the NASD shall retain the \$750.00 previously deposited in full satisfaction thereof.

ARBITRATION PANEL

Concurring Arbitrators' Signatures

  
Ronald Thomas Sparr, Esq.  
(Public/Chairman)

  
Douglas Delaney, Jr.  
(Industry/Panelist)

  
Oscar Bobis  
(Public/Panelist)

Date of Decision: September 18, 1992