

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

In the Matter of the Arbitration Between

Name of Claimants

Bernie and Barbara Schwartz

91-02559

Name of Respondents

The Investment Center, Inc.
Neil Subin
James DeBolt

REPRESENTATION

For Claimants: Milan K. Gregory, Esq. of the Law Offices of Milan Gregory.

For Respondent Investment Center: Thomas Hanrahan, Esq. of the Law Offices of Thomas Hanrahan.

For Respondent Neil Subin: William E. Dowling, Esq. of Gold & Wachtel.

James Debolt did not appear.

CASE INFORMATION

Statement of Claim filed: August 16, 1991.

Claimants' Submission Agreement signed on: May 30, 1991.

Statement of Answer filed by Respondent Investment Center on: November 29, 1991.

Respondent Investment Center's Submission Agreement signed on: November 18, 1991.

Statement of Answer filed by Respondent Neil Subin on: March 13, 1992.

Respondent Neil Subin's Submission Agreement signed on: March 10, 1992.

Respondent James Debolt did not file an Answer or Submission Agreement as required by the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions: September 21, 1992, 2 Sessions.
 October 16, 1992, 2 Sessions.
 December 2, 1992, 2 Sessions.

Hearing Location: NASD offices located in New York City, NY.

CASE SUMMARY

Claimants alleged that on June 8, 1989 Respondents Neil Subin and James DeBolt purchased shares of various companies for Claimants' account, without Claimants' authorization, and Respondent Neil Subin signed a Confession of Judgement where he agreed to pay Claimant \$54,000.00 with interest and Respondent Neil Subin refused to make any payments. Claimants further alleged Respondent Investment Center neglected to supervise trading activity, act with due care and diligence with respect to Claimants' account, and failed to supervise its employees.

Respondent Investment Center alleged that it is not within the scope of Respondents Neil Subin and James DeBolt's employment to make unauthorized trades nor to make settlements or admission on behalf of Respondent Investment Center. Respondent Investment Center asserted the following defenses: action is time barred, ratification, failure to mitigate damages, and Respondent Neil Subin and James DeBolt have no authority to bind Investment Center. Respondent Investment Center asserted the following cross claims against Respondent Neil Subin and James DeBolt: in the event Investment Center is found liable to Claimants, Respondent Neil Subin and James DeBolt are liable to Investment Center and there was collusion between Claimants and Respondents Neil Subin and James DeBolt.

Respondent Neil Subin maintained any and all losses which may have been suffered by Claimants are result of factors affecting the securities market as a whole or are result of the conduct of co-respondents, and are not attributable to the conduct of Respondent Neil Subin. Respondent Neil Subin further maintained the two documents relied upon by Claimants to buttress their position are false and were obtained through extortionate means and were not properly notarized. Respondent Neil Subin asserted the following defenses: Claimants losses are attributable solely to market factors over which Respondent Neil Subin had no control, all trading activity on behalf of Claimants was performed by or at request of Claimants, Claimants failed to mitigate damages.

RELIEF REQUESTED

Claimants requested \$53,000.00 representing Claimants' losses; \$1,000.00 representing commissions paid by Claimants; \$6,000.00 representing margin interest and interest, costs; and \$100,000.00 in punitive damages.

Respondent Investment Center requested the claim be dismissed in its entirety and that Claimants and Respondent Neil Subin and James DeBolt indemnify Investment Center, including attorneys' fees and costs.

Respondent Neil Subin requested all claims be dismissed and an award of costs and fees incurred by Respondent Neil Subin.

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 original remains on file with the NASD.

The arbitration panel made the following rulings with regard to the Respondent James DeBolt:

In accordance with Section 1 of the Code, the panel ruled that it had jurisdiction over the Respondent James DeBolt;

In accordance with Section 25 of the Code, Respondent James DeBolt was served with the Statement of Claim and given an opportunity to respond which he failed to do;

In accordance with Section 21 and Section 26 of the Code, the Respondent James DeBolt was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing;

In accordance with Section 29 of the Code, the panel ruled that the Respondent James DeBolt had adequate notice of this hearing and determined to proceed with the Respondent as a party in his absence.

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 The Investment Center and Neil Subin and James DeBolt be and hereby are liable, joint and severally, and shall pay Claimants the sum of \$45,375.00, which includes interest.
2. Respondents Neil Subin and James DeBolt be and hereby are liable, jointly and severally, and shall pay Respondent Investment Center the sum of \$22,687.50.

3. Claimants' claim for punitive damages is denied in its entirety.
4. Respondent Investment Center be and hereby is liable and shall pay Claimants the sum of \$950.00 to represent the hearing session deposit and filing fee.
5. Each side is bear its own costs including attorneys' fees.

FORUM FEES

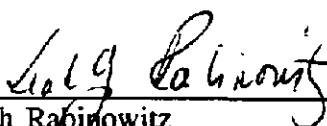
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

6 sessions X \$750.00 = \$4,500.00 less hearing session deposit of
\$750.00 = \$3,750.00 net due.

Respondent Investment Center be and hereby is liable and shall pay the NASD the sum of \$3,750.00 to represent forum fees.

The NASD shall retain the \$750.00 hearing session deposit and \$200.00 filing fee previously deposited by Claimants.

ARBITRATOR SIGNATURE



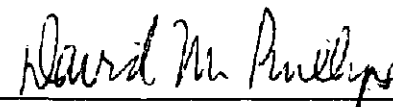
Leah Rabinowitz
Public Arbitrator

Decision Dated: January 28, 1993

STATE OF: NEW YORK
COUNTY OF: NEW YORK

ss:

On this day 25 of January, 1993, before me personally appeared **Leah Rabinowitz** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



DAVID M. PHILLIPS
Notary Public, State of New York
No. 31-4614277
Qualified in New York County
Commission Expires April 30, 1993

3. Claimants' claim for punitive damages is denied in its entirety.
4. Respondent Investment Center be and hereby is liable and shall pay Claimants the sum of \$950.00 to represent the hearing session deposit and filing fee.
5. Each side is bear its own costs including attorneys' fees.

FORUM FEES

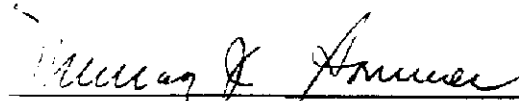
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ARBITRATOR SIGNATURE

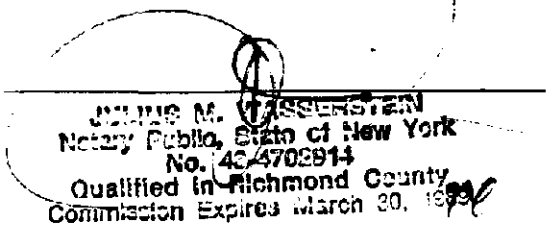


Murray I. Sommer, Esq.
Public Arbitrator

Decision Dated: January 28, 1993

STATE OF: *New York* S.S.:
COUNTY OF: *New York*

On this *30th* day of *December*, 1992, before me personally appeared Murray I. Sommer, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


JULIUS M. GASSENSTEIN
Notary Public, State of New York
No. 40,470,2914
Qualified in Richmond County
Commission Expires March 30, 1993

3. Claimants' claim for punitive damages is denied in its entirety.
4. Respondent Investment Center be and hereby is liable and shall pay Claimants the sum of \$950.00 to represent the hearing session deposit and filing fee.
5. Each side is bear its own costs including attorneys' fees.

FORUM FEES


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

6 sessions X \$750.00 = \$4,500.00 less hearing session deposit of
\$750.00 = \$3,750.00 net due.

Respondent Investment Center be and hereby is liable and shall pay the NASD the sum of \$3,750.00 to represent forum fees.

The NASD shall retain the \$750.00 hearing session deposit and \$200.00 filing fee previously deposited by Claimants.

ARBITRATOR SIGNATURE


Richard Berenger
Industry Arbitrator

Decision Dated: January 28, 1993

STATE OF:  S.S.:
COUNTY OF: 

On this 4th day of January, 1993, before me personally appeared **Richard Berenger** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

ROBERT J. TADDEO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-477-8404
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1993

