

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

IN THE MATTER OF THE ARBITRATIONS BETWEEN  
FIRST MONTAUK SECURITIES CORP.  
FIRST MONTAUK FINANCIAL CORP.,  
CLAIMANTS

V.

CAROLE GERSTENBLUTH,  
EDWARD GLUECK, JUDITH GLUECK,  
JULIUS SCHREIBER, HELEN  
SCHREIBER and PAUL R.  
GERSTENBLUTH

RESPONDENTS

CASE NOS. 91-03895;  
91-03896; and 91-03897 \*  
(consolidated)

AWARD BY CONSENT

CASE SUMMARY

Claimants, First Montauk Securities Corp. and First Montauk Financial Corp. ("First Montauk") filed four separate actions against the above-named Respondents, alleging that each of the Respondents maintained a brokerage account through First Montauk in the fall of 1989. Each of the accounts held shares of the common stock of Mohasco Corp. on margin, pursuant to the terms of a margin agreement signed by each of the Respondents and Broadcast Capital Corp. (Broadcast), First Montauk's clearing firm at that time. Through a mandatory exchange, Mohasco Corp. exchanged all of its shares of common stock and issued non-marginable debentures.

After failing to meet margin calls issued by the clearing broker, the securities holdings in each of the Respondents' accounts was sold out in March 1990. After the sellouts, each of the accounts was left with an unsecured debit balance which was not

met by any of the Respondents after demand for payment by First Montauk was made upon each.

Claimants filed a Motion For Consolidation in November 1991 requesting that each of these four cases be consolidated into a single action. On February 20, 1992, the Director of Arbitration decided to consolidate the cases.

Each of the Respondents filed an Answer denying liability to the Claimants. Respondents, Edward and Judith Glueck and Julius and Helen Schreiber filed counter-claims against First Montauk alleging that the purchase of the securities was unsuitable for them based upon their investment objectives; that the brokerage firm failed to make timely margin calls if properly and timely made would have prevented any loss to the Respondents, and also allege that the Claimants failed to act timely in liquidating securities when it allegedly became evident that it was appropriate to do so.

Respondent, Carole Gerstenbluth, is not included in the settlement agreement between the Claimants and the remaining Respondents. Therefore, this award does not include the disposition of Case No. 91-02285.

#### RELIEF REQUESTED

First Montauk requested actual damages from each of the Respondents as follows:

- A. Edward Glueck and Judith Glueck, \$79,016.05;
- B. Julius Schreiber and Helen Schreiber, \$14,461.39;
- C. Paul Gerstenbluth, \$29,408.30.

In addition, the Claimants sought interest from March 23, 1990 and attorney's fees in accordance with the customer margin agreements signed by each of the Respondents.

In their Counterclaim, Respondents Julius and Helen Schreiber sought compensatory damages of an unspecified amount, interest on the amount of damages from June 6, 1989 to the date of the award and attorney's fees. In their Counterclaim, Respondents Edward and Judith Glueck sought compensatory damages of an unspecified amount, interest on their amount of damages from June 6, 1989 to the date of the award as well as reasonable attorney's fees. Additionally, each of the parties has requested the other cover their costs associated with this action.

#### AWARD BY CONSENT

On October 27, 1992, a preliminary conference was held on the record at the offices of the NASD, Department of Arbitration with respect to certain motions brought by each of the Respondents. At the hearing, the Claimants were represented by their counsel, Robert I. Rabinowitz, Esq. and Victor J. DiGioia, Esq. and each of the Respondents was represented as follows: Julius and Helen Schreiber and Edward and Judith Glueck, by James M. Bell, Esq.; Carole Gerstenbluth by Randolph Brause, Esq., all of whom attended the hearing personally, and by Paul Gerstenbluth pro se who participated by telephonic conference. At the preliminary conference, it was determined that Respondents would be permitted to file their answers out of time, counterclaims and requests for

document production on the Claimants and that the Claimants would have a certain number of days in which to respond. The hearing was reset for December 2, 3 and 4, 1992.

Prior to commencement of the second hearing session, Claimants and each of the Respondents with the exception of Carole Gerstenbluth, entered into a settlement agreement wherein each party agreed to the following:

A. Claimants would be paid a total of \$33,000 by the three remaining Respondents.

B. In consideration for the above payment, Claimants dismiss all allegations against each of the Respondents individually, jointly, and/or collectively.


C. Respondents, Edward and Judith Glueck and Helen and Julius Schreiber dismiss any and all counterclaims against the Claimants.

D. Each party will bear the respective attorney's fees and costs.

E. The hearing session fee of \$750.00 for the hearing session on October 27, 1992 shall be borne equally between the Respondents and the Claimants. Claimants having paid in excess of that amount with the filing of their claim and Respondents having

reimbursed Claimant one-half of that amount, and therefore the NASD shall retain \$750.00 of the hearing session deposit fees submitted by Claimants.

CONCURRING ARBITRATORS

  
JOSEPH B. RUSSELL, ESQ.

  
BARBARA J. GLENN, ESQ.

  
ANNE CUGLIANTI, ESQ.

Dated: April 23, 1993

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 5<sup>th</sup> day of April, 1993, before me personally appeared Anne Cugliani 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.

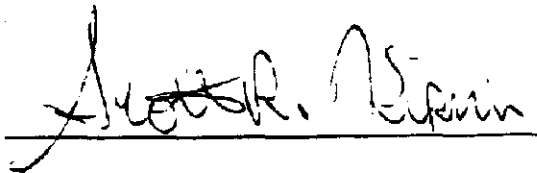
Walter Johnson

WALTER JOHNSON  
Notary Public, State of New York  
No. 25-7101605  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires 9/30/94

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 16 day of APRIL, 1993, before me personally appeared Joseph B. Russell, 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.



SCOTT R. KIPNIS  
NOTARY PUBLIC, State of New York  
No. 6008100  
Qualified in Nassau County  
Commission Expires Dec. 28, 1994

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Notary Public

My commission expires:

CLOR G. A. MICHELE

NOTARY PUBLIC, State of New York

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NEW YORK COUNTY

Form Expires 5/3/97