

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
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New York, N.Y. 10004
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In the Matter of the Arbitration BetweenName of Claimant

Marcella Newman

91-04006

Name of Respondents

Murphy Favre
Phillip Kimmel

REPRESENTATION

For Claimant: John P. Crowley

For Respondent, Murphey Favre: Philip Mortenson, Esq. of Washington Mutual Savings Bank, parent company to Murphey Favre.

Respondent, Phillip Kimmel represented himself.

CASE INFORMATION

Statement of Claim filed on: December 13, 1991

Claimant's Submission Agreement signed on: February 14, 1992.

Respondent, Murphey Favre's Statement of Answer was filed on: April 27, 1992.

Murphey Favre did not file an executed Submission Agreement.

Respondent Phillip Kimmel's Statement of Answer was filed on: April 3, 1992.

Respondent Phillip Kimmel's Submission Agreement was signed on: April 18, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: September 9, 1992/2 sessions.

Hearing Location: NASD office located in New York, New York.

CASE SUMMARY

Claimant, Marcella Newman, (hereinafter "Claimant") alleged that she was an inexperienced investor who suffered financial losses as a result of unsuitable investments recommended to her on the basis of materially misleading information by Respondent, Phillip Kimmel (hereinafter "Phillip Kimmel"), a representative of Respondent, Murphey Favre (hereinafter "Murphey Favre"). Particularly, Claimant alleged that Phillip Kimmel recommended that she purchase 3000 shares of Scopas Technology (hereinafter "Scopas"), a company she was unfamiliar with and which subsequently filed for bankruptcy. Claimant further alleged that the basis for making the purchase was Phillip Kimmel's assertions that Scopas was a takeover target and would double or triple in value and that he had already purchased some. Claimant alleged that because she is unsophisticated in matters involving investments, she did not recognize the speculative nature of Phillip Kimmel's solicitation. Claimant alleged that she never received, nor did Philip Kimmel or any representative of Murphey Favre send, a prospectus nor any other literature with regard to her purchase. Claimant further alleged that Phillip Kimmel subsequently purchased an additional 3000 shares of Scopas without being authorized to do so, and when questioned, misled her into believing that the transaction was non-revocable.

Respondents, Phillip Kimmel and Murphey Favre, maintained that Claimant was a sophisticated, experienced and knowledgeable investor who operated her own business, had over \$100,000 invested with Philip Kimmel, had previously made speculative investments and who expressed her investment objectives as safety of principal, long term growth, income and speculation. Thus, Respondents maintained that Scopas was a suitable investment for Claimant. Philip Kimmel further maintained that he spoke with Claimant on a regular basis, by telephone and in person, and that no grievances were made known to him. Phillip Kimmel also alleged that he recommended other investments which Claimant purchased and never complained about. Respondent, Murphey Favre, maintained that the genesis of Claimant's claim is the loss in value of Scopas, as is evidence by her complaint over a year and a half after the purchase. Both Respondents maintained that Claimant's account was not discretionary and that all securities purchased, including Scopas, were discussed thoroughly and her approval was given before any purchases was made.

RELIEF REQUESTED

Claimant requested damages against the Respondents as follows:

1. \$2,848.70 plus interest from October 14, 1998, the date of the unauthorized transaction, to a date set by the arbitration panel.
2. Any other relief as the panel may deem appropriate.

Respondents requested that Claimant's claim be 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. The Claim is hereby dismissed in its entirety.
2. Each party shall bear their own costs of this action.

FORUM FEES

Pursuant to Section 43(c) of the Code of arbitration Procedure, the following Forum Fees are assessed:

Non refundable filing fee: \$ 50.00
Hearing Session fee: \$200.00

1. Claimant is hereby assessed the non-refundable filing fee of \$50.00. Claimant is entitled to offset this amount with the \$50.00 previously paid to the NASD.

2. Claimant is hereby assessed one half of the hearing session fees in the amount of \$100. Claimant is hereby directed to pay to the NASD the sum of \$100 (One Hundred Dollars).

3. Respondents are hereby jointly and severally assessed one half of the hearing session fee in the amount of \$100. Respondents are hereby directed to pay to the NASD the sum of \$100 (One Hundred Dollars).

Arbitrator's Signature

Howard L. Mandell
Howard L. Mandell

Public Chairperson

Date of Decision: November 4, 1992