

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :  
: Sean F. Holland :  
: :  
: Claimant : CASE #91-04012  
: : AWARD  
vs. :  
: :  
Kochcapital :  
Steven Wyman :  
James J. Caprio :  
Schneider Securities, Inc. :  
: Respondents :  
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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 18, 1991, Claimant, Sean F. Holland, who appeared Pro Se, alleged that in December 1990 Respondent Steven Wyman, a registered representative with Respondent, Kochcapital solicited and recommended the purchase of 2,500 shares of International Environmental Group at 2-1/4 by misrepresenting its future value along with its potential risk of loss and "guaranteeing" its profitability. Claimant further alleged that he discussed at length with Respondent Steven Wyman his apprehension and expressed great skepticism about investing without knowledge or experience, at which time, Respondent Steven Wyman assured Claimant that he would be closely following Claimant's account and would maintain a long term relationship of investment advice for him. Claimant contended that after the purchase, he never heard from Respondent, Steven Wyman again, although he tried numerous times to contact him. Claimant further contended that he eventually received communication from Respondent James J. Caprio, a registered representative with Respondent, Kochcapital, who assured Claimant that he would be handling his investment account and Respondent, James J. Caprio later advised Claimant that Respondent, Kochcapital ceased doing business, at which time, he would be affiliated with Respondent, Schneider Securities, Inc. who were located at the same address. Claimant asserted that he never heard from Respondent, James J. Caprio, at which time, he contacted Respondent, Schneider Securities, Inc. to attempt to discover the status of his investment and was informed that Respondent, James J. Caprio was no longer employed with Respondent, Schneider Securities, Inc. Claimant further asserted that through Respondents, Steven Wyman and James J. Caprio's inappropriate handling of his account, his

stock, investment is now worthless and he lost his entire investment. Claimant argued that Respondents, Steven Wyman and James J. Caprio through the fraudulent practices endorsed by Respondents, Kochcapital and Schneider Securities, Inc. participated in a scheme to defraud unsuspecting public customers, therefore, all Respondents are liable for Claimant's losses.

Respondent, Steven Wyman, who appeared Pro Se, maintained that in December 1990 he recommended to Claimant, Sean F. Holland the purchase of 2,500 shares of International Environmental Group at 2-1/4 based solely on the information and price quotes provided by the management at Respondent, Kochcapital. Respondent Steven Wyman further maintained that when he resigned from Respondent, Kochcapital, he could not contact Claimant according to his signed agreement with Respondent Kochcapital. Respondent Steven Wyman contended that Claimant stated in his Statement of Claim that he was notified by Respondent, James J. Caprio that he would be servicing his account at Respondent, Kochcapital and later at Respondent, Schneider Securities, Inc., at which time, Respondent, Steven Wyman never heard of Respondent, Schneider Securities, Inc., as the name change took place after his departure from Respondent, Kochcapital. Respondent, Steven Wyman contended that he never guaranteed profits to Claimant and always dealt with Claimant honestly, therefore, he should be dismissed from the claim. Respondent, Steven Wyman asserted that he resigned from Respondent, Kochcapital because he did not approve of their methods of doing business and Respondent Kochcapital made the recommendation therefore, they should be held liable for any losses sustained by Claimant.

Respondent, James J. Caprio by and through his personal representative Jerold Judkowitz maintained that Claimant, Sean F. Holland never sold or purchased securities through Respondent, James J. Caprio, therefore, he could not cause any loss in claimant's account. Respondent, James J. Caprio further maintained that after the closing of Respondent, Kochcapital, he registered with Respondent, Schneider Securities, Inc. and shortly, thereafter, Respondent Schneider Securities, Inc. ended its relationship with him, at which time, Respondent, James J. Caprio has not registered with any securities dealer, therefore, he could not contact Claimant to transact business or make any recommendations. Respondent, James J. Caprio contended in a Motion to Dismiss that all allegations of Claimant, in no way point to any wrongdoing or culpability at Respondent, James J. Caprio, therefore, he should be dismissed from the claim.

Page Three  
AWARD  
91-04012

Respondent, Schneider Securities, Inc. by and through Barry D. Tull their Chief Compliance Officer maintained that Respondent, James J. Caprio was employed by them after he ceased employment with Respondent, Kochcapital and Respondent, Schneider Securities, Inc. had no connection with Respondent, Kochcapital and accordingly had no control over either Respondents, Steven Wyman and James J. Caprio when the stock was purchased. Respondent, Schneider Securities, Inc. further maintained that they never acted in concert with either Respondents, Kochcapital or James J. Caprio to effect the transactions, therefore, they cannot be held liable for Claimant's losses.

Respondent, Kochcapital failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant, Sean F. Holland requested \$5,640.00 in actual damages plus interest at the legal rate of 10% per annum together with punitive damages and costs.

Respondent, Steven Wyman requested the claim be dismissed.

Respondent, James J. Caprio requested the claim be dismissed.

Respondent, Schneider Securities, Inc. requested the claim be denied.

Respondent, Kochcapital failed to file an Answer to the Statement of Claim.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jimmie R. Gregory, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 12, 1991, by the Respondent Steven Wyman on February 13, 1992, by the Respondent, James J. Caprio on March 6, 1992, by the Respondent, Schneider Securities, Inc. on February 21, 1992 and not by the Respondent, Kochcapital as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

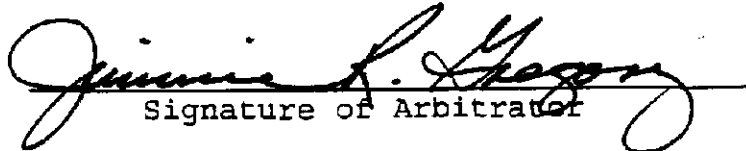
1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent, Kochcapital was served by regular mail on February 3, 1992 and given an opportunity to respond, which they failed to do so. Respondent, Kochcapital failed to file an Answer to the Statement of Claim.
2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Kochcapital was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Kochcapital, Schneider Securities, Inc., Steven Wyman and James J. Caprio are jointly and severally liable and shall pay to the Claimant, Sean F. Holland the sum of \$3,000.00 in damages.
2. The Claimant's request for interest is denied.
3. The Claimant's request for Punitive damages is denied.
4. The parties shall bear their respective costs.
5. The filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Sean F. Holland shall be retained by the NASD.

AFFIRMATION

I, JIMMIE R. GREGORY, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
Signature of Arbitrator

DATE OF DECISION: July 13, 1992