

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Maziar & Lucy Keshavarz  
Keshavarz & Associates Inc.  
Amir H. Keshavarz

Case No. 91-04146

Name of Respondent(s)

Steven Phillips  
Kioumars Hafezi  
First Montauk Securities Corp.  
Stuart James Co., Inc.

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**REPRESENTATION**

For Claimants, Maziar and Lucy Keshavarz, Amir Keshavarz ("the Keshavarzs") and Keshavarz & Associates, Inc. ("Keshavarz & Associates"): Theodore Brill, Esq. of the Law Offices of Theodore F. Brill, P.A.

Respondents, Steven Phillips ("Phillips") and Kioumars Hafezi ("Hafezi") were pro se.

For Respondent, Stuart James Co., Inc. ("Stuart James"): James Padgett of Stuart James.

For Respondent, First Montauk Securities Corp. ("First Montauk"): Robert Rabinowitz, Esq. of the Law Offices of Robert Rabinowitz.

**CASE INFORMATION**

Statement of Claim filed on: December 31, 1991. Claimants' Submission Agreements signed on: December 16, 1991.

Respondent, Phillips', Statement of Answer filed on: April 21, 1992. Respondent, Phillips', Submission Agreement signed on: April 6, 1992.

Respondent, First Montauk's, Statement of Answer filed on: March 26, 1992. Respondent, First Montauk's, Submission Agreement signed on: March 25, 1992 by Herbert Kurinsky on behalf of First Montauk.

Respondent, Hafezi's, Statement of Answer filed on: April 21, 1992. Respondent, Hafezi, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code. (see "Other Issues")

Due to Stuart James bankruptcy, Respondent, Stuart James, did not file a Statement of Answer or sign a Submission Agreement. (see "Other Issues")

### **HEARING INFORMATION**

On January 26, and 27, 1993, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

### **CASE SUMMARY**

Claimants alleged that Respondents were liable for: violations of Federal and state securities laws; misrepresentation; market manipulation; and, failure to supervise. Claimants alleged that Respondents' recommended that they invest in certain low priced speculative securities which were unsuitable for Claimants.

Respondent, Phillips, denied all allegations of wrongdoing and alleged that: he had no direct dealings with Claimants and Phillips discharged his supervisory responsibilities with care and diligence.

Phillips asserted affirmative defenses including: estoppel; statute of limitations; and, Claimants were experienced investors who were aware of the risks.

Respondent, Hafezi, denied all allegations of wrongdoing and alleged that: Claimants were kept aware of all the transactions; Claimants were aware of the risks involved; and, there was no misrepresentation.

Respondent, First Montauk, denied all allegations of wrongdoing and alleged that: Claimants received confirms and monthly statements; there was no stock manipulation; and, there were no misrepresentations.

First Montauk asserted affirmative defenses including that Claimants were aware of the risks involved and assumed such risks.

### **RELIEF REQUESTED**

Claimants requested damages of \$70,500.00, plus punitive damages of \$211,500.00, plus attorney's fees and costs.

Respondent, Phillips, requested dismissal of the claim plus costs and attorney's fees.

Respondent, Hafezi, requested dismissal of the claim.

Respondent, First Montauk, requested dismissal of the claim plus costs and attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. This Panel finds that Respondent, Hafezi was required to sign a Submission Agreement pursuant to Sections 12 and 25 of the code, Hafezi being a person associated with an NASD member firm, First Montauk, at the time this controversy arose.
2. Claimants and Respondent, First Montauk, entered into a settlement agreement prior to the commencement of the hearing and, therefore, Claimants dismissed First Montauk, with prejudice.
3. Pursuant to the bankruptcy filed by Respondent, Stuart James, all actions against Stuart James were stayed and, therefore, the Panel dismissed them, without prejudice.
4. The Panel has reviewed Claimants' Motion for Sanctions and the responses thereto and hereby denies the Motion for Sanctions.
5. 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 originals remain on file with the NASD.

### **AWARD**

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. Respondent, Phillips, is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondent, Hafezi, is found not liable and, therefore, all claims against him are hereby dismissed.
3. Claimants' request for attorney's fees and costs is denied.

### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### **FORUM FEES**

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (four sessions x \$750.00 per session)

2. Claimants are hereby assessed \$1,500.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$750.00 payable to the National Association of Securities Dealers, Inc.

3. Respondent, Hafezi, is hereby assessed \$1,500.00 payable to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/  
James R. South

Industry

/s/  
Norman L. Weiss

Public

Dissenting Arbitrator's Signature

Arbitrator Ronald Spann dissents as to paragraph #2 of the Award and as to paragraph #4 of the Other Issues Considered and otherwise concurs in the decision.

/s/  
Ronald Thomas Spann, Esq.

Public

Date of Decision: April 21, 1993