

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Katherine A. Schwartz

92-00774

Name of Respondent

Russell G. Koch

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 4, 1992, Claimant Katherine A. Schwartz, who appeared Pro Se, alleged that in February of 1988 she and her husband were looking for a long term investment for their daughter's education, whereby they called PanOceanic Investment to inquire about information they sent regarding the Seattle Jewelry Exchange and spoke with Respondent Russell G. Koch, who was at that time, a representative for PanOceanic Investments. Claimant further alleged that she told Respondent Russell G. Koch that she wanted to establish a secure investment fund for her new daughter's education and her intention was to invest her savings into something that had a better return than the 5.4% interest that she was earning at the credit union, at which time, Claimant explained that her husband had a moderate income level, under \$35,000, and that she would remain at home as a full time mother. Claimant contended that Respondent suggested instead that she purchase CB Crest stock at about 50 cents a share because it was his belief that the company would soon be merged with a larger company and the stocks would be in the 3-4 dollar range as early as April, whereby Respondent won her trust in their phone conversation by assuring her that he would invest her savings in the same secure stocks bought for his children. Claimant contended that she agreed to purchase the stock and Respondent told her to make the check payable to Koch Trading because he would be taking care of her account whereby Claimant had no reason to believe that this was not standard operating procedure. Claimant further contended that several weeks passed and she did not receive acknowledgement that her check was received nor did she receive the stock certificates; however, the check had been cashed on March 9, 1988 and only after repeated phone calls, Claimant finally received a letter from Respondent dated June 3, 1988 "to announce the newest member of the NASD .... Kochcapital". Claimant asserted that she spoke to Respondent whereby he apologized for the delay, and told her the account had

been misplaced during the hectic time of setting up a new office. at which time, Respondent assured her that he would have the stock sent. Claimant further asserted that she finally received 2,000 shares of CB Crest stock, dated June 14, 1988 whereby three months had passed between the date she agreed to purchase the stocks and the date the stocks were actually purchased and sent to her. Claimant further alleged that Respondent responded to her letter that inquired about her account with a phone call by stating that CB Crest stocks were "not going anywhere" whereby he assured Claimant that he would regain her money by investing \$300.00 from his own funds, at which time, Respondent said he would send her forms to open her account, apologized for the confusion, and continued to assure her that her investment was secure. Claimant further contended that Respondent purchased and sold for her several stocks for her from his own account from July, 1989 to September, 1989. Claimant further asserted that she continued to believe Respondent when he said he would regain her initial investment of \$2,493.75 because he invested his own funds to regain her investment and the investments made appeared to be profitable. Claimant further alleged that in April, 1990 she informed Respondent that she would be away for a year during her husband's sabbatical and subsequently, upon her return, she was disappointed to find that the phone numbers she had been given for Kochcapital had been disconnected and that Respondent could not be located. Claimant further contended that she was unable to get any information regarding her initial investment of CB Crest stocks. Claimant further asserted that she completely trusted Respondent when he told her that her original investment would be secure and she continued to trust him during the hectic time as he began his new company because he assured her he would take care of her account, thus, Respondent should be held liable for the balance due her from her account.

Respondent Russell G. Koch failed to file an Answer to the Statement of Claim.

#### **RELIEF REQUESTED**

Claimant Katherine A. Schwartz requested the sum of \$2,403.75 in actual damages.

Respondent Russell G. Koch failed to file an Answer to the Statement of Claim.

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

In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent Russell G. Koch was served a copy of the Statement of Claim by regular mail on April 13, 1992 and given an opportunity to respond, which he failed to do. Respondent Russell G. Koch was notified on July 26, 1993, via certified mail, that his Statement of Answer was overdue. The signed certified mail receipt was returned to the NASD dated July 31, 1993, evidencing his receipt of this correspondence. Respondent Russell G. Koch failed to file an Answer to the Statement of Claim.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Russell G. Koch was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

### **AWARD**

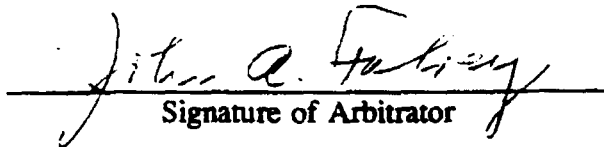
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John A. Falvey, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 28, 1992 and not by the Respondent as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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. Respondent Russell G. Koch is liable and shall pay to the Claimant Katherine A. Schwartz the sum of \$2,403.75 in actual damages.
2. Respondent Russell G. Koch is liable and shall pay to the Claimant Katherine A. Schwartz simple interest rate of 5.4% per annum from March 4, 1988 to the date of payment of the award.
3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Katherine A. Schwartz shall be returned by the NASD. Respondent Russell G. Koch is liable and shall pay to the Claimant the sum of \$50.00, as reimbursement.

### **AFFIRMATION**

I, JOHN A. FALVEY, 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: November 1, 1993