

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lewis C. Schellbach

Case #92-01160

Name of Respondent

A. Gary Shilling and Company, Inc.

REPRESENTATION

For Claimant, Lewis C. Shellbach ("Claimant"), Thomas M. Campbell, Esq., from the law firm of Smith Campbell & Paduano.

For Respondent, A. Gary Shilling and Co., Inc. ("Respondent"), Robert H. Gardner, Esq. from the law firm of Feuerstein, Sachs, Maitlin, Flemming & Greene.

CASE INFORMATION

Statement of Claim filed on April 2, 1992.

Claimant's Submission Agreement was signed on March 24, 1992.

Respondent's Statement of Answer and Counterclaim was filed on June 24, 1992.

Respondent's Submission Agreement was signed on June 22, 1992.

Claimant's Reply to Counterclaim was filed on August 18, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: January 19, 1993 - Two Sessions
 January 20, 1993 - Two Sessions
 March 10, 1993 - Two Sessions
 March 11, 1993 - Two Sessions

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33

Whitehall Street, New York City, New York.

CASE SUMMARY

Claimant alleges that he joined the Respondent firm on September 1, 1990, as Chief Investment Officer and Director responsible for the generation of asset management fees on individual, high net worth portfolios. Claimant further states that he was to be paid a salary of \$75,000.00 plus 33 1/3% of the asset management fees up to \$150,000.00 to \$450,000.00 and that commissions were to be paid earned semi-annually in January and July.

Claimant alleges that the employment agreement was intended to be reduced to writing, but although reduced to writing by Respondent, was not executed by the parties. Claimant also alleges that when he left Respondent's employ he was owed compensation. He further alleges that he made a written demand for payment and has not been paid.

Respondent admits that Claimant was employed as an investment officer and director whose duty was to generate additional asset management fees on high individual net worth portfolios at an annual salary of \$75,000.00 plus other compensation.

Respondent, however, denies the existence of a binding contract, and argues that the parties contemplated revisions to the unfinalized and unsigned "understanding". Respondent asserts a Counterclaim based upon damages sustained from Claimants' failure to fully perform his responsibilities of managing the portfolios and back office operation. Additionally, Respondent asserts a Counterclaim for salary paid to, but was unearned by Claimant. Respondent also contends that Claimant owes the firm fees from clients who were induced to move their portfolios elsewhere.

In his reply to the Counterclaim, Claimant states that Respondent admits to the existence of a contract which justifies an award to Claimant. Claimant also states that practically every allegation in the Counterclaim is false or misleading. Claimant alleges that all of the alleged losses were a direct result of Respondent's incompetence and violations of the securities laws and rules of the various exchanges. Claimant also states that Respondent should be sanctioned for spreading such deliberate and malicious falsehoods and for requiring Claimant to incur additional costs to defend the allegations.

RELIEF REQUESTED

Claimant requests an award of \$28,315.00 in earned fees, plus interest, costs and attorney's fees incurred in arbitrating this claim and the Counterclaim. Claimant also requests that the Counterclaim be dismissed in its entirety.

Respondent requests that the arbitrators dismiss the claim and enter judgment against Claimant

and in favor of Respondent in an amount of at least \$93,000.00 plus interest, costs of filing this arbitration and legal fees.

OTHER ISSUES CONSIDERED & DECIDED

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 undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is hereby liable to Claimant in the amount of **TWENTY EIGHT THOUSAND THREE HUNDRED AND FIFTEEN DOLLARS AND ZERO CENTS (\$28,315.00)**.
2. Respondent is further liable to Claimant for interest at a rate of nine percent (9%) from July 1, 1991 until the date of this decision.
3. Claimant's request for attorney's fees is denied.
4. Claimant's request for costs is denied.
5. The Counterclaim is denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed as follows.

Non-refundable claim filing fee: \$500.00.

Non-refundable Counterclaim filing fee: \$500.00.

Hearing session fees: \$600.00 x 8 sessions = \$4,800.00.

1. Claimant is assessed \$500.00 non-refundable filing fee plus \$1,200.00 for two hearing

sessions. Claimant previously paid \$1,100.00 and shall remit the balance, \$600.00 to the NASD.

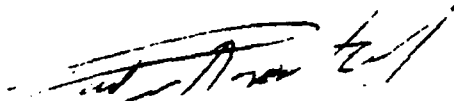
2. Respondent is assessed \$500.00 non-refundable filing fee plus \$3,600.00 for six hearing sessions. Respondent previously paid \$1,100.00 and shall remit the balance, \$3,000.00 to the NASD.

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

ARBITRATION PANEL

Robert A. Foy, Esq.	-	Industry Chairperson
Paul M. Rosenthal	-	Industry Panelist
Linda R. Blakely	-	Industry Panelist

Concurring Arbitrator's Signature
Name


Paul M. Rosenthal

Date of Decision: April 12, 1993

92-01160

STATE OF *NEW YORK* s.s.:
COUNTY OF *NEW YORK*

this *26th* day of *March*, 1993, before me personally appeared Paul M. Rosenthal know and
ow to me to be the individual described in and who executed the foregoing instrument and be
ily acknowledged to me that he executed the same.

Elaine Beninati

ELAINE BENINATI
Notary Public, State of New York
No. 43-4888002
Qualified in Richmond County
Commission Expires March 23, 19*95*

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sessions. Claimant previously paid \$1,100.00 and shall remit the balance, \$600.00 to the NASD.

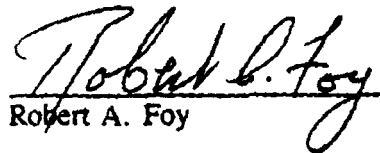
2. Respondent is assessed \$500.00 non-refundable filing fee plus \$3,600.00 for six hearing sessions. Respondent previously paid \$1,100.00 and shall remit the balance, \$3,000.00 to the NASD.

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

ARBITRATION PANEL

Robert A. Foy, Esq. -	Industry Chairperson
Paul M. Rosenthal -	Industry Panelist
Linda R. Blakely -	Industry Panelist

Concurring Arbitrator's Signature
Name


Robert A. Foy

Date of Decision: April 12, 1993

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STATE OF *New York* S.S.:
COUNTY OF *Westchester*

On this *5* day of *April*, 1993, before me personally appeared Robert Foy know and know 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.

Susan Birnbaum

SUSAN BIRNBAUM
Notary Public, State of New York
No. 4884370
Qualified in Westchester County
Commission Expires

7/22/93

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sessions. Claimant previously paid \$1,100.00 and shall remit the balance, \$600.00 to the NASD.

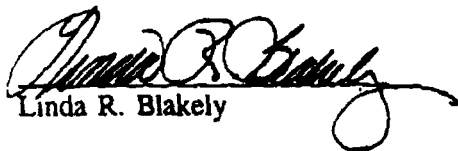
2. Respondent is assessed \$500.00 non-refundable filing fee plus \$3,600.00 for six hearing sessions. Respondent previously paid \$1,100.00 and shall remit the balance, \$3,000.00 to the NASD.

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

ARBITRATION PANEL

Robert A. Foy, Esq. -	Industry Chairperson
Paul M. Rosenthal -	Industry Panelist
Linda R. Blakely -	Industry Panelist

Concurring Arbitrator's Signature
Name

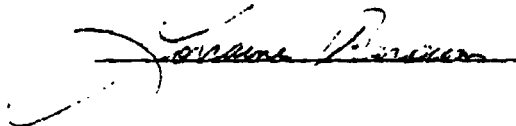

Linda R. Blakely

Date of Decision: April 12, 1993

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STATE OF *NY* S.S.:
COUNTY OF *NY*

On this 7 day of *April*, 1993, before me personally appeared Linda Blakely know and know to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that she executed the same.



BERNARD E. BARONIS
NOTARY PUBLIC STATE OF NEW YORK
EXPIRATION DATE 1994
COUNTY OF *NY*
APR 14, 1993 *7*