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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Donald Napier

92-01172

Name of Respondents

Mark Goldsmith  
Robert Blatt  
Eugene Muller

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**REPRESENTATION**

For Claimant: Linda McCarthy, Esq. and John Frohling, Esq. of Frohling & Hanley.

For Respondent: David E. Robbins, Esq. of Kaufmann Gilden & Carlin.

**CASE INFORMATION**

Second Amended Statement of Claim filed: January 11, 1993.  
Claimant's Submission Agreement signed on: March 26, 1992.

Respondent, Mark Goldsmith's Submission Agreement signed on: April 21, 1993.  
Respondent, Robert Blatt's Submission Agreement signed on April 16, 1993.  
Respondent, Eddie Muller (incorrectly named herein as Eugene Muller)'s Submission Agreement signed on: April 19, 1993.

Respondents' Joint Answer and Section 6 Compliance motion filed on: February 16, 1993.

Claimant's Response to the Section 6 Compliance motion filed on: March 19, 1993.

**HEARING INFORMATION**

Hearing Date/Sessions: November 2, 1993 - Two Sessions.  
Hearing Location: Harry's Restaurant, 90 Pearl Street, New York, NY.

### CASE SUMMARY

Claimant maintains that Respondents, Mark Goldsmith ("Goldsmith"), Robert Blatt ("Blatt") and Eugene Muller ("Muller") were all officers of Phillips, Appel & Walden ("PA&W") and that PA&W was registered as a broker dealer with the SEC and various national securities exchanges, including the NASD, Inc. Claimant maintains that in the course of managing his investment portfolio, PA&W bought and sold various stocks on his behalf on a full case basis. Claimant maintains that as a result of the actions taken by PA&W, he suffered damages as well as physical and emotional distress.

Claimant alleges that he filed an action which was litigated in Federal District Court, but that before he could collect on a judgment or award, the corporation was dissolved. Claimant alleges that the Respondents filed with the NASD, a Uniform Request for Withdrawal from Broker-Dealer Registration. Claimant alleges that the withdrawal filing made misrepresentations by responding "no" to inquiries as to whether the broker-dealer owed any money to customers or whether the broker-dealer was subject to any complaints, investigations or claims. Claimant alleges that PA&W was permitted to withdraw.

Claimant alleges that Respondents fraudulently avoided his claim by closing the business of PA&W, transferring assets to another entity and leaving the Claimant no ability to collect on an actively litigated claim.

Respondents maintain that, assuming arguendo, that the Form BDW was improperly completed, there is no causal connection between the Form BDW and any loss to the Claimant. Respondents maintain that Respondent, Goldsmith signed the form, and that neither of the other two Respondents did. Respondents also maintain that Claimant's attorney's were advised that the assets of PA&W were being liquidated.

Respondents allege that Claimant is pursuing essentially the same claims against the Respondents in the United States District Court for the District of New Jersey, in violation of Section 6 of the NASD Code of Arbitration Procedure.

Claimant maintains that he filed an action in both the NASD and Federal Court in the event that the NASD declined jurisdiction. Claimant further maintains that a Motion was made in Federal Court to stay Federal Court action pending the NASD arbitration.

### **RELIEF REQUESTED**

Claimant requested damages in an unspecified amount, plus interest and costs of this action.

Respondents requested that the Claim be dismissed.

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

The arbitrators read the papers submitted by the parties with regard to the Section 6 issue raised by the Respondents. The arbitrators also heard oral arguments from the parties regarding this issue at the hearing held on November 2, 1993. The panel hereby unanimously denies the application made by the Respondents.

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 arbitrators have 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 respective costs of this action, including attorneys fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

\$200.00	Non-refundable filing fee
\$1,500.00	Hearing session fees (2 sessions x \$750.00)

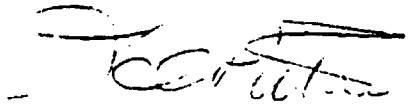
- 1) Total forum fees in the amount of \$1,500.00 are hereby assessed against the Claimant. Claimant is entitled to offset this amount with the \$950.00 previously paid to the NASD. Therefore, Claimant is directed to pay the balance of \$750.00 to the NASD, Inc.

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Concurring Arbitrator's Signature  
Name

Public Chairperson

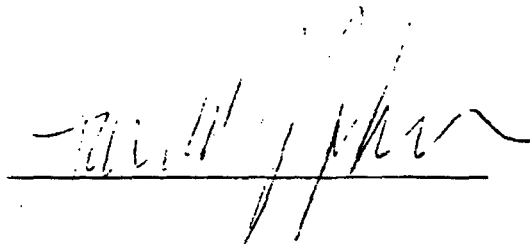


Lawrence A. Pittore, Esq.

Date of Decision: December 15, 1993

STATE OF NEW YORK  
COUNTY OF

On this 30th day of November, 1993, before me personally appeared Lawrence A. Pittore known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



HAROLD J. JOHNSON  
Notary Public, State of New York  
No. 4639003  
Qualified in Westchester County  
Commission Expires Jan. 31, 1994

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Concurring Arbitrator's Signature  
Name

Industry Panelist

Maive R. Giovati, Esq.

Date of Decision: December 15, 1993

STATE OF NEW YORK  
COUNTY OF

On this 15 day of DEC, 1993, before me personally appeared Maive R. Giovati known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Sandro A. Rogers

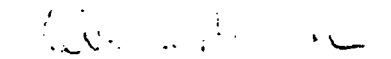
SANDRO A. ROGERS  
Notary Public, State of New York  
No. 31-483589  
Qualified in New York County  
Commission Expires Aug. 31, 1995

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Concurring Arbitrator's Signature  
Name

Public Panelist

  
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Rebecca A. Novak. Esq.

Date of Decision: December 15, 1993

STATE OF NEW YORK  
COUNTY OF

On this 13<sup>th</sup> day of December, 1993, before me personally appeared Rebecca A. Novak known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed thee same.

  
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Notary Public  
State of New York  
Commission Expires 12/31/94  
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