

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jay Soshnick and Loren Rosenblum

Case No. 92-01553

Name of Respondents

Gary Kertzman
Eddie Guthmann

REPRESENTATION

For Claimants, Jay Soshnick ("Soshnick"), and Loren Rosenblum ("Rosenblum"): Russell L. Forkey, Esq.

For Respondent, Eddie Guthmann ("Guthmann") Michael R. Casey, Esq. of Casey and Molchan.

Respondent, Gary Kertzman ("Kertzman"): Pro Se.

CASE INFORMATION

Statement of Claim filed: May 6, 1992. Claimant's Submission Agreement signed: April 21, 1992.

Respondent, Guthmann's, Statement of Answer filed: July 8, 1992. Respondent, Guthmann's, Submission Agreement signed:

Respondent, Kertzman, did not file a Statement of Answer or submit an executed Submission Agreement as required by Sections 12 and 25 of the Code.

HEARING INFORMATION

On March 29; June 1 and June 2, 1993, in Fort Lauderdale, Florida, hearings lasting five (5) sessions were conducted.

CASE SUMMARY

Claimants alleged that when Guthmann opened an account for them at Raymond James where Guthmann was an account executive, that Claimants' investment objectives were growth and income with relative safety of principal and that Kertzman agreed that he would always seek prior approval before taking any action relative to Claimants' account. Claimants alleged that notwithstanding the foregoing, Kertzman executed unauthorized transactions in Claimants' account which was unknown to Claimants because Kertzman changed the mailing address on Claimants' account to reflect Kertzman's home address and by forging Claimants' signatures. Claimants contended that Respondent, Guthmann, the branch manager at the time, was negligent in his supervision of Kertzman in that he either knew, or should have known the foregoing.

Respondent, Guthmann, denied all allegations of wrongdoing and alleged that Soshnick's investment objectives were short-term appreciation speculation and income and that Soshnick instructed Kertzman to change the address on the account from Soshnick's address to reflect Kertzman's address in order to hide the existence of the account from his, then, finance Rosenblum. Respondent, Guthmann, further denied that any trades in Claimants' account were unauthorized or that Guthmann churned Claimants' account.

RELIEF REQUESTED

Claimants requested compensation and punitive damages of \$40,034.30, interest, costs, and such other relief the panel deems appropriate.

Respondent, Guthmann, requested dismissal of all claims and such other and further relief that the panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Kertzman did not submit an executed Submission Agreement nor did he appear at the hearing. Based upon the evidence submitted in Arbitrator's Exhibit No. 1 regarding hearing notices to the parties, this arbitration panel found that proper notice existed as well as

jurisdiction pursuant to Section 12(a) of the Code of Arbitration Procedure over Respondent, Kertzman. Pursuant to Section 29 of the Code of Arbitration Procedure and based upon evidence in Arbitrator's Exhibit No. 1, this Panel proceeded with the hearing in Kertzman's absence.

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, Kertzman, is found liable, and shall pay to the Claimants the amount of \$30,034.30, including interest.
2. Respondents, Guthmann, is also found liable and shall pay to the Claimants the further amount of \$10,000.

OTHER COSTS

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,000.00 (five (5) hearing sessions X \$400.00).

1. Claimant is hereby assessed forum fees in the amount of \$1,000.00 for which the NASD shall retain the \$400.00 previously deposited by Claimants leaving a balance due by Claimants of \$600.00.
2. Respondents, Kertzman and Guthmann, are hereby assessed jointly and severally, forum fees in the amount of \$1,000.00 payable to the NASD.

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3. The NASD shall retain the non-refundable fee of \$120.00 paid by Claimants.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/
Ronald Thomas Spann, Esq.

Public/Chairman

/s/
Douglas Delanoy, Jr.

Industry/Panelist

/s/
Allan J. Schneider, PhD

Public/Panelist

Date of Decision: June 30, 1993