

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Thomas Kellerman :

Claimant :

vs. :

CASE #92-01678AWARD

Best Investors Group, Inc. :

Glen Ostrowski, III :

Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 19, 1992, Claimant Thomas Kellerman, by and through his counsel, Peter P. Charnetsky, Esq. of Butler, Allen, Clark & Place, Vestal, NY, alleged that on May 22, 1991 he opened a non-discretionary account with Respondent Glen Ostrowski at Respondent Best Investors Group, Inc. whereby the Respondent Glen Ostrowski did not have the authority to trade the account without Claimant's authorization. Claimant further alleged that from the period of June 28, 1991 through July 11, 1991 Respondent Glen Ostrowski executed the following unauthorized trades: the purchase of 600 shares of LNCTW; the purchase of 500 shares of CLE; the sale of 500 shares of JWP; the sale of 600 shares of LNCT and the sale of 300 shares of LNCTW. Claimant contended that all these trades were executed without his prior approval, solely at the discretion of Respondent Glen Ostrowski while Claimant was traveling and could not have been contacted. Claimant further contended that on July 15, 1991, upon his return, he immediately contacted Respondent Glen Ostrowski to question him about the activity in his account and Respondent Glen Ostrowski agreed that the trades were unauthorized, at which time, Respondent Glen Ostrowski would take care of it. Claimant asserted that he contacted Respondent Glen Ostrowski several times whereby he would assure Claimant that the unauthorized trades would be taken care of but that it takes time to do. Claimant further asserted that in November 1991 Respondent Best Investors Group, Inc. by and through Mr. Jim Romanowski contacted him to advise him of a margin call, at which time, Claimant stated that he would not put any more money into this account since the trades had been unauthorized. Claimant argued that as a result of the margin call, all shares of RMII and 200 shares of CLE were sold on November 26, 1991, at which time, Claimant contacted the Branch Manager to explain the situation whereby he said he would look into it. Claimant further argued that Respondent Glen Ostrowski unauthorized trades in his account and Respondent Best Investors Group, Inc. failure to rectify the matter, caused him to sustain damages.

Respondent Best Investors Group, Inc., by and through their counsel John E. Lawlor, Esq., Sole Practitioner, Garden City, NY, maintained that they deny the allegations in the Statement of Claim whereby Claimant's allegations were not brought to the attention of the firm or firm management until nearly six months after the alleged unauthorized trades. Respondent Best Investors Group, Inc. further maintained that Claimant appears to be trading the market on a "heads I win, tails you lose" strategy, at which time, he retained account statements and confirmations for nearly six months whereby Claimant was only heard to complain after he lost money. Respondent Best Investors Group, Inc. contended that Claimant's delay in objecting, assuming such objection was justified, prevented the firm from taking action to prevent losses or further losses in Claimant's account. Respondent Best Investors Group, Inc. further contended that Claimant's losses, if any, were caused, in whole or in part, by his own careless, negligent and affirmative conduct in failing to take action reasonable designed to prevent and/or mitigate his losses.

Respondent Glen Ostrowski III, who appeared Pro Se, maintained that Claimant Thomas Kellerman received a margin call for the Claires Stores he purchased on July 3, 1991 whereby this security was purchased five and a half months before his first complaint. Respondent Glen Ostrowski III further maintained that Claimant spoke to Respondent Best Investors Group, Inc. by and through their operations manager, Mr. Ron Filosa to inform him that every trade done in his account was unauthorized, at which time, Mr. Filosa advised him that the first two trades in his account had been paid by Claimant with the purchase written in the memo area of Claimant's check, whereby Claimant changed his story that the RMII and the JWP trades were authorized but all other trades over the next six months were not authorized. Respondent Glen Ostrowski III contended that only after Claimant received a margin call did he first speak to a manager and in response to the fact that he was away, Claimant could and did call using Respondent's Best Investors Group, Inc. 800 number on all buy purchases. Respondent Glen Ostrowski III further contended that Claimant specifically advised him that he had no new money and informed him to use the proceeds on the sale of his existing stock to purchase the Lancit Media and the Claire Stores. Respondent Glen Ostrowski III asserted that Claimant received monthly and quarterly statements as well as confirmations on each trade, at which time, Claimant failed to object to any of the trades.

RELIEF REQUEST

Claimant Thomas Kellerman requested \$4,434.00 in actual damages plus interest at the statutory rate together with Punitive damages and attorney's fees.

Respondent Best Investors Group, Inc. requested the claim be denied and asserted a Cross claim against Respondent Glen Ostrowski III, for indemnification.

Respondent Glen Ostrowski III requested the claims be denied.

AWARD

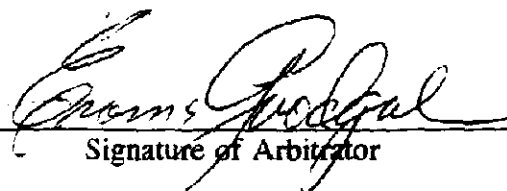
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jerome Goodgal, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 14, 1992, by the Respondent Glen Ostrowski III on June 23, 1992 and not by the Respondent Best Investors Group, Inc. 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. Respondents Best Investors Group, Inc. and Glen Ostrowski III are jointly and severally liable and shall pay to the Claimant Thomas Kellerman the sum of \$3,595.91 in damages.
2. The Cross-claim of Respondent Best Investors Group, Inc. against Respondent Glen Ostrowski III is dismissed.
3. The Claimant's request for interest is denied.
4. The Claimant's request for Punitive damages is denied.
5. The parties shall bear their respective costs, including attorney's fees.
6. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Thomas Kellerman shall be retained by the NASD, Inc. Respondents Best Investors Group, Inc. and Glen Ostrowski III are jointly and severally liable and shall pay to the Claimant the sum of \$150.00 as reimbursement.

AFFIRMATION

I, **JEROME GOODGAL**, 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: December 2, 1992

STATE OF: NEW JERSEY

SS:

COUNTY OF: PASSAIC

On this 20 day of November 1992, before me personally appeared **Jerome Goodgal** to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



Nathan S. Friedman

NATHAN S. FRIEDMAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 20, 1997