

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Marcella Schmidt

No. 92-01953

Name of Respondent

Lee Sackman

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**REPRESENTATION OF PARTIES**

For Claimant: Robert J. Long, Esq., of Lynch, Lumber & Wysocki, Antioch, Illinois. .

For Respondent: A. Brad Busscher, Esq., Vice President and Senior Attorney, Kemper Securities, Inc.

**CASE INFORMATION**

Statement of Claim filed: June 10, 1992.

Claimant's Submission Agreement signed on: May 29, 1992.

Statement of Answer filed by Respondent, Lee Sackman on: August 3, 1992.

Respondent Lee Sackman's Submission Agreement signed on: July 20, 1992.

**HEARING INFORMATION**

Hearing date: January 29, 1993. Two (2) sessions.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimant, Marcella Schmidt ("Claimant") alleged that Respondent, Lee Sackman ("Respondent") sold almost her entire portfolio without her authorization. Claimant stated that after her husband had passed away, she had taken the certificates to Respondent to have her husbands name removed from them. Claimant asserted that after a few months she had called Respondent to inquire about the securities. Claimant further alleged that Respondent told her that the securities were safe with him. Claimant alleged that the next thing she received were the confirmations of sales, and papers to sign. Claimant asserted that she refused to sign the papers. Lastly, Claimant asserted that Respondent had sold her whole portfolio for one bond, Fed. Natl. Mortg.

Respondent denied the allegations set forth in the Statement of Claim. In addition, Respondent asserted the following affirmative defenses:

1. The Claimant's verbal instructions to sell her various securities holdings constituted a binding contract, which said course of conduct is customary in the securities industry;
2. The Claimant's Statement of Claim fails to disclose various facts including, but not limited to, the fact that the Claimant subsequently modified her instructions to the Respondent informing him not to sell a mutual fund, canceling her purchase of the 9% FNMA Note and requesting the proceeds in the form of a check;
3. The Claimant's subsequent modification of her initial instructions to the Respondent constituted a ratification of her initial instruction to sell her various securities holdings;
4. The Claimant had stated no statutory or contractual authority which entitles her to recover a taxable liability based on specific instructions to sell her various securities holdings;
5. The Claimant had stated no statutory or contractual authority which entitles her to recover damages for "time, out-of-pocket expenses, and duress caused by unauthorized actions; and
6. The Statement of Claim fails to state any claim for which relief can be granted.

**RELIEF REQUESTED**

Claimant requested a monetary damages totaling \$16,236.00. The elements that make up Claimant's request are as follows: Taxes due on capital gain realized through the sale of securities \$10,838.00; Commissions paid to Respondent and SEC fees on the sales \$3,611.00; and a request for time, out of pocket expenses, and duress \$1,787.00.

Respondent requested that Claimant's Statement of Claim be Dismissed in its entirety, and that the arbitration panel award the Claimant nothing. The Respondent also requested that he be awarded his costs and expenses, including reasonable attorneys' fees incurred in his defense of this matter.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed by 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 original remains 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. Claimant, Marcella Schmidt's Statement of Claim is hereby denied and dismissed with prejudice.
2. Each party shall pay their own costs and attorneys' fees associated with this arbitration, except as set forth more fully below.

**OTHER COSTS**

3. Respondent Lee Sackman is liable for, and shall pay to Claimant, Marcella Schmidt, the sum of \$400.00 as reimbursement for her costs herein.

**FORUM FEES**

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

2 hearing sessions X \$300.00 = \$300.00

Pursuant to Section 43 (c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall retain the hearing session deposit in the amount of \$300.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$300.00 are assessed against the Respondent.

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

**Arbitrator's Signature**

**Dated:**

January 29, 1993

/s/ Kent Lawrence  
Kent Lawrence  
Presiding Chair  
Public Arbitrator

Date of Service by the NASD: Feb. 2, 1993