

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Michael R. Difate

vs.

Case #
92-02241

Name of Respondents

Yankee Financial Group, Inc.
Richard Kresge

REPRESENTATION

For Claimant: Gerald E. Marcus, Esq.

For Respondent: Thomas J. McCabe, Esq.

CASE INFORMATION

Statement of Claim filed: July 7, 1992.

Claimant's Submission Agreement signed on: June 26, 1992.

Statement of Answer filed by Respondent: December 28, 1992

Respondent, Yankee Financial Group, Inc.'s Submission Agreement signed on:
July 7, 1993.

Respondent, Richard Kresge's Submission Agreement signed on: July 7, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: July 7, 1993/Two Sessions
 July 8, 1993/Two Sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant, Michael R. DiFate ("DiFate") asserted that he suffered significant damages as a result of the reckless, fraudulent, manipulative and deceptive practices perpetrated by the Respondents including: directing and effecting unsuitable investments for Claimant's account; making and effecting unauthorized and discretionary trades in Claimant's account without having been granted formal discretionary authority to do so; and, failing to follow the appropriated procedures for handling a discretionary account. In addition, Claimant asserted Respondent Yankee Financial Group Inc. ("YFGI") failed to appropriately supervise the conduct of Respondent, Mr. Richard Kresge ("Kresge"), in managing Claimant's account. Moreover, Claimant alleged that Respondent Kresge failed to notify him concerning the nature of penny stocks. Claimant further asserted Respondents engaged in unauthorized trading: misrepresented investments and recommended unsuitable investments. Additionally, (Claimant asserted that Respondents failed to provide Claimant with competent professional services and thereby breached their contractual and fiduciary duties to Claimant in accordance with the Rules and Regulations of the NASD). Moreover, Claimant maintained that Respondents engaged in common law and securities fraud based upon the fraudulent and deceitful inducement of the execution of the option and margin agreements.

Respondent, Yankee Financial Group, Inc. ("YFGI"), asserted that a substantial portion of Claimant's allegations are barred by applicable Statutes of Limitations and the NASD Code of Arbitration which mandates that claims must be filed within six (6) years from the occurrence of the alleged dispute. Furthermore, Respondents "YFGI" and "Kresge" asserted that they did not initially solicit Claimant's business. Respondent Kresge asserted that upon their first meeting, Claimant allegedly stated that he wanted to speculate in the stock and options market although Respondent Kresge allegedly warned Claimant that he could sustain considerable losses in doing so. Respondents contended that at the time, Claimant at all times represented himself as being an affluent, successful, independent businessman who had substantial assets. Respondents contend that they had no reason to believe that options trading or trading in "Penny Stocks" was an unsuitable investment.

Respondents asserted that on information and belief, when Claimant initially opened an account with Bremen & Co. ("Bremen & Co.") all required forms were submitted to, and completed by Claimant; Claimant was approved to engage in options and stock trading; Claimant promptly received accurate trade confirmations and monthly account statements which fully disclosed all pertinent information pertaining to the Claimant's account and Claimant allegedly approved each trade executed for his account. Respondent Kresge asserted he discussed with the Claimant the nature of each transaction and each security acquired prior to any transaction being made. Upon terminating his employment with Bremen & Co., Respondent Kresge established Yankee Financial Group, Inc. ("YFGI") at which time Claimant transferred his account from "Bremen & Co." to "YFGI" and allegedly completed all required forms and agreements. Respondents

asserted that Claimant expressly authorized every trade executed before each trade was made. Respondent Kresge asserted that he explained the risk of each trade and did not carelessly or intentionally recommend securities or transactions to Claimant which Respondent knew, or had reason to know were unsuitable for Claimant. Respondent asserted that trade confirmations providing details of every trade were promptly sent to Claimant as well as monthly statements. Furthermore, Respondent asserted that Claimant never complained that Respondent made unauthorized trades; traded on margin without Claimant's permission; or coerced him into purchasing in penny stocks or options.

RELIEF REQUESTED

Based upon the foregoing, Claimant demands Judgment against Respondents Yankee Financial Group and Richard Kresge, jointly and severally for actual damages of \$93,900; for commissions in the amount of \$10,000; punitive damages of \$25,000; interest at the rate of ten percent per annum for the period from the date Claimant established an account at Respondent "YFGI" to the date of any award, and margin interest in the amount of \$4,086.81 for the years 1988, 1989, and 1990. Claimant submitted exhibit C-29 which indicated net total actual losses in the amount of \$62,127.30.

Claimant further requested relief for costs, expenses and disbursements, including reasonable attorney's fees.

Respondent requested dismissal of all claims and that Respondents be awarded costs, including reasonable attorney's fees.

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. All claims against Respondent Yankee Financial Group, Inc. be and hereby are dismissed in all respects.
2. All claims against Respondent Richard Kresge be and hereby are dismissed in all respects.
3. Respondent Yankee Financial Group, Inc.'s request for attorney's fees is denied.

FORUM FEES

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

4 sessions X \$750.00 = \$3,000.00 minus hearing session deposit
(\$750.00) = net \$2,250.00 due.

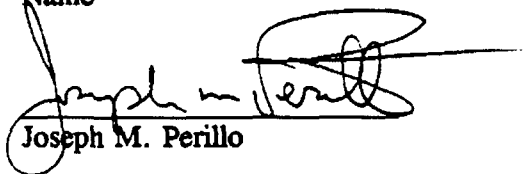
The Claimant be and hereby is liable and shall pay to the NASD the sum of \$2,250.00 to represent forum fees.

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

ARBITRATION PANEL

Joseph M. Perillo	-	Public Chairperson
Edward T. Hill	-	Public Panelist
Steven J. Kolleeny	-	Industry Panelist

Concurring Arbitrator's Signature
Name

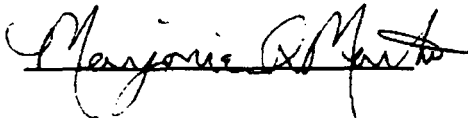

Joseph M. Perillo

Date of Decision: July 30, 1993

STATE OF NEW YORK
COUNTY OF *New York*

S.S.:

On this 26th day of July, 1993, before me personally appeared Joseph M. Perillo known 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.



MARJORIE A. MARTIN
Notary Public in and for the State of New York
No. 24 4775005
Qualified in Kings County
Commission Expires December 31, 1994

FORUM FEES

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ARBITRATION PANEL

Joseph M. Perillo	-	Public Chairperson
Edward T. Hill	-	Public Panelist
Steven J. Kolleeny	-	Industry Panelist

Concurring Arbitrator's Signature
Name

Edward T. Hill
Edward T. Hill

Date of Decision: July 30, 1993

STATE OF NEW YORK
COUNTY OF *Westchester* S.S.:

On this *26* day of July, 1993, before me personally appeared Edward T. Hill known to me to be the individual described in and who executed the foregoing instrument and be dully acknowledged to me that he executed the same.

Joel Darby

DARBY JOEL
Notary Public, State of New York
No. 5918678
Qualified in Nassau County
Commission Expires *Dec 31, 1994*

FORUM FEES

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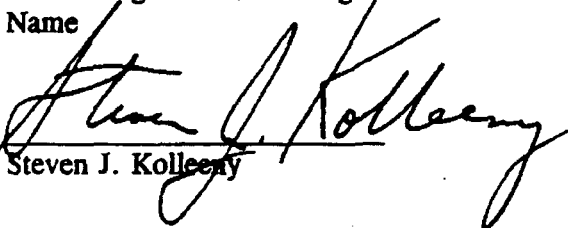
The Claimant be and hereby is liable and shall pay to the NASD the sum of \$2,250.00 to represent forum fees.

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

ARBITRATION PANEL

Joseph M. Perillo	-	Public Chairperson
Edward T. Hill	-	Public Panelist
Steven J. Kolleeny	-	Industry Panelist

Concurring Arbitrator's Signature
Name


Steven J. Kolleeny

Date of Decision: July 30, 1993

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STATE OF NEW YORK
COUNTY OF

S.S.:

On this 26th day of July, 1993, before me personally appeared Steven J. Kolleeny known to me to be the individual described in and who executed the foregoing instrument and he dully acknowledged to me that he executed the same.



ADAM J. FRIEDMAN
Notary Public, State of New York
No. 41-172521
Qualified in Queens County
Certificate filed in New York County
Commission Expires October 1, 1994