

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Eugene Caputo

92-03310

Name of Respondents

Michael Janik

Philip Gratz

Peter Cardillo

REPRESENTATION

For Claimant Eugene Caputo ("Claimant"): Francis M. Correll, Jr., Esq. of the law firm of Klehr, Harrison, Harvey, Branzburg & Ellers.

For Respondent Peter Cardillo ("Cardillo"): Mr. Cardillo represented himself.

For Respondent Michael Janik ("Janik"): Mr. Janik did not appear and was not represented.

For Respondent Philip Gratz ("Gratz"): Mr. Gratz did not appear and was not represented.

CASE INFORMATION

Statement of Claim filed: September 29, 1992

Claimant's Submission Agreement signed on: September 28, 1992

Statement of Answer filed by Cardillo (filed as a joint statement of Answer by Investors Associate and Cardillo) on: December 18, 1992

Cardillo's Submission Agreement signed on: January 13, 1993

Respondents Janik and Gratz did not file Answers or Submission Agreements.

HEARING INFORMATION

Pre-Hearing Conference: January 31, 1994 - one session

Hearing Dates/Sessions: June 28, 1994 - one session
August 22, 1994 - two sessions

Hearing Location: NASD District Office, Philadelphia, PA

CASE SUMMARY

Claimant alleged, among other things, that Janik made material misstatements of fact and omitted material information to induce Claimant to invest in Delta Rental Systems ("Delta"). Claimant alleged that Respondents Janik, Gratz and Cardillo ("Respondents") induced him to invest his entire life savings in Delta although Respondents were aware that Delta was a shell company and part of a scheme to defraud the public by Paul Carvahal ("Carvahal") and his associate Carlos Prado ("Prado"). Claimant alleged that Respondents were aware of the misdeeds or should have been aware of the misdeeds perpetrated by Carvahal and Prado. Claimant alleged that Respondents knew, or should have known, that their statements, representations and omissions were false and/or misleading. Claimant alleged that Respondents owed Claimant a fiduciary duty and the requisite duty of care of a broker to his customer. Claimant alleged that these duties have been breached by Respondents negligent and reckless conduct. Claimant alleged that Respondents breached their contract with Claimant, that they churned Claimant's account, that they violated federal and state laws and acted in a wanton, intentional and malicious manner in regard to Claimant and his account.

Cardillo denied all allegations asserted by Claimant and alleged, among other things, that he had no knowledge of the illegalities that occurred in relation to Delta, Carvahal, Prado and Gratz. Cardillo maintained that Claimant was accustomed to taking large positions in speculative investments. Cardillo maintained that Claimant decided to accumulate a large position in Delta based on the due diligence file in Cardillo office that consisted of Securities and Exchange Commission ("SEC") filings as well as "buy" recommendations from other brokerage firms. Cardillo maintained that he had no reason to doubt that Delta was a sound investment and was completely unaware of any fraud being perpetrated in relationship to Delta. Cardillo maintained that all trades were authorized by Claimant and at all times Claimant had the right to sell his shares in Delta. Cardillo maintained that the information provided to him was the same information that had been filed with the SEC or was otherwise publicly

disseminated. Cardillo maintained that the SEC investigated the Delta matter for nine months and the SEC brought actions against the wrongdoers. Cardillo maintained that he did nothing improper in relation to Claimant's account. Cardillo maintained that he was unaware of any of the actions of Gratz.

RELIEF REQUESTED

Claimant requested, in his pleading, compensatory damages in the amount of \$130,000.00, plus punitive damages, interest, attorneys' fees and costs.

Cardillo requested that Claimant's claim be denied in its entirety and that Claimant be assessed his attorneys' fees and costs in defending this matter.

OTHER ISSUES CONSIDERED & DECIDED

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.

That the Panel determined that Respondents Janik and Gratz were properly served with the Claimant's claim and notice of this matter. Notwithstanding Janik and Gratz' failure to submit an answer or appear, the Panel exercised its jurisdiction over Respondents Janik and Gratz and they are bound by all rulings and determination of this Panel. Service letters are attached to this Award as Exhibit A.

At the hearing on June 28, 1994, the Claimant advised the Panel that all matters against First Montauk Securities Corp. had been settled and that all claims against Investors Associates, Inc. had been withdrawn.

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. That Respondent Michael Janik is liable and shall pay to Claimant the sum of \$10,000; exclusive of interest.

2. That Respondent Philip Gratz is liable and shall pay to the Claimant the sum of \$10,000; exclusive of interest.
3. That Claimant's claims against Respondent Peter Cardillo are denied in their entirety.
4. That the parties shall bear their respective costs and attorneys' fees except as specified herein.
5. That Claimant's claim for punitive damages is denied in its entirety.

OTHER COSTS

All postponement fees paid by the parties shall be retained and any outstanding postponement fees shall be assessed.

FORUM FEES

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

3 sessions X \$750 = \$2,250 minus hearing session deposit of \$750 filed by Claimant that shall be retained by the NASD= net \$1,500 due.

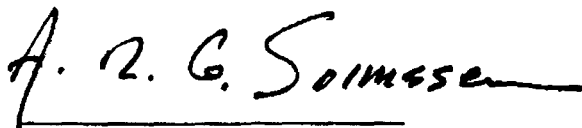
Forum Fees Assessed Against: Respondent Cardillo is assessed forum fees in the amount of \$750 to cover the costs of the hearing session on June 28, 1994. Respondents Janik and Gratz are jointly and severally assessed forum fees in the amount of \$750.

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

Concurring Arbitrator's Signature

Name

Public/Industry



Arthur R. G. Solmssen
Chairman

Public

NASD Date of Decision: September 30, 1994

2. That Respondent Philip Gratz is liable and shall pay to the Claimant the sum of \$10,000; exclusive of interest.
3. That Claimant's claims against Respondent Peter Cardillo are denied in their entirety.
4. That the parties shall bear their respective costs and attorneys' fees except as specified herein.
5. That Claimant's claim for punitive damages is denied in its entirety.

OTHER COSTS

All postponement fees paid by the parties shall be retained and any outstanding postponement fees shall be assessed.

FORUM FEES

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

3 sessions X \$750 = \$2,250 minus hearing session deposit of \$750 filed by Claimant that shall be retained by the NASD = net \$1,500 due.

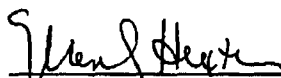
Forum Fees Assessed Against: Respondent Cardillo is assessed forum fees in the amount of \$750 to cover the costs of the hearing session on June 28, 1994. Respondents Janik and Gratz are jointly and severally assessed forum fees in the amount of \$750.

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

Concurring Arbitrator's Signature

Name

Public/Industry


Ellen S. Dexter

Public 9/28/94
Public

NASD Date of Decision: September 30, 1994

2. That Respondent Philip Gratz is liable and shall pay to the Claimant the sum of \$10,000; exclusive of interest.
3. That Claimant's claims against Respondent Peter Cardillo are denied in their entirety.
4. That the parties shall bear their respective costs and attorneys' fees except as specified herein.
5. That Claimant's claim for punitive damages is denied in its entirety.

OTHER COSTS

All postponement fees paid by the parties shall be retained and any outstanding postponement fees shall be assessed.

FORUM FEES

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

3 sessions X \$750 = \$2,250 minus hearing session deposit of \$750 filed by Claimant that shall be retained by the NASD= net \$1,500 due.

Forum Fees Assessed Against: Respondent Cardillo is assessed forum fees in the amount of \$750 to cover the costs of the hearing session on June 28, 1994. Respondents Janik and Gratz are jointly and severally assessed forum fees in the amount of \$750.

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

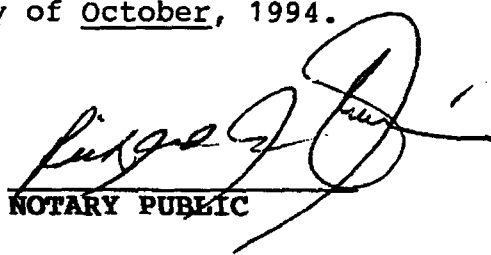
Concurring Arbitrator's Signature

Name	Public/Industry
 _____ John J. O'Neill, Esq.	_____ Industry

NASD Date of Decision: September 30, 1994

AFFIRMATION

Sworn to before me this 6th day of October, 1994.


NOTARY PUBLIC

RICHARD E. GONZALEZ
Notary Public, State of New York
No. 4653245
Qualified in Nassau County
Commission Expires Dec. 31, 1995 