

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

PUBLIC

Name of Claimant(s)

Suk Chang, M.D.

92-03584

Name of Respondent(s)

Isadore S. Burstein
John A. Griffin

REPRESENTATION

For Claimant Suk Chang, M.D.: Stephen A. Wydrzynski, Esq.

For Respondent Isadore S. Burstein: James D. Coleman, Esq. of the law firm Ballard Spahr Andrews & Ingersoll.

For Respondent John A. Griffin: Jeffrey N. Kale, Esq. of the law firm Berkowitz & Leabman, P.C.

CASE INFORMATION

Statement of Claim filed: October 21, 1992.

Claimant's Submission Agreement signed on: September 21, 1992.

Statement of Answer filed by Respondent, Isadore S. Burstein, on: February 22, 1993.

Respondent, Isadore S. Burstein's, Submission Agreement signed on: March 18, 1993.

Statement of Answer filed by Respondent, John A. Griffin, on: January 13, 1993.

Respondent, John A. Griffin's, Submission Agreement signed on: January 11, 1993.

HEARING INFORMATION

Hearing Date/Sessions: October 27, 1993 / Two Sessions

Hearing Location: NASD offices located at 1818 Market Street, 14th Floor, Philadelphia, PA, 19103.

CASE SUMMARY

Claimant alleged that Respondents, Isadore S. Burstein ("Burstein") and John A. Griffin ("Griffin"), engaged in fraud and misrepresentation, recommending and purchasing unsuitable investments for the Claimant and based these allegations on transactions involving Mizlou and Technigen securities. Claimant maintained that he was a conservative investor, with safety his primary concern. Claimant maintained that Respondents solicited his purchase of these securities, despite the reservations and skepticism he expressed.

Claimant further alleged that when he expressed concern that the stocks were declining in value, Respondents told him to be patient and the stock will go up in time. Claimant further maintained the stocks failed to rebound, and the Mizlou stock was sold at a loss of more than \$20,000.00 and the current value of the Technigen stock is approximately \$25,000.00 less than what Claimant purchased it for.

Claimant further alleged that the solicitation for Mizlou was for common stock, and not the warrants, with a short expiration date, that Respondents ultimately purchased for the Claimant. Respondents reassured Claimant that the price would "go up in a few months," and that the quickly approaching warrant expiration date need not be a worry because the date would be extended.

Respondent, Isadore S. Burstein, alleged that Claimant was an experienced, sophisticated investor, who was interested in growth stocks, and who frequently made investment moves based on his own ideas.

Respondent Burstein further alleged that Claimant first employed Burstein as a financial advisor in the late 1970's, when Burstein was employed at D.H. Wallach. Burstein alleged that Claimant must have been satisfied with his handling of Claimant's account because Claimant transferred his account with Burstein, when he joined Thomas McKinnon Securities. Burstein further alleged that at the time of Claimant's purchase of Mizlou and Technigen, Griffin was Claimant's primary advisor, and it was Griffin who handled these purchases.

Burstein further alleged that Claimant received confirmation notices and monthly account statements, failed to make any complaints for almost a year, and thereby, authorized, accepted and/or ratified the complained of transactions. Burstein further alleged that any loss sustained by Claimant is attributable to market conditions and to Claimant's own investment decisions, not to any action or inaction by Burstein. Burstein further alleged that Claimant's claim is barred

by the doctrines of laches, waiver, estoppel and ratification; that the claim is barred by the Statute of Limitations; that Claimant has failed to state a claim upon which relief can be granted; that Claimant failed to mitigate his damages; that Claimant assumed the risks associated with the investments of which he now complains.

Respondent John A. Griffin alleged that he was a broker working for Thomas McKinnon Securities when it was announced that the firm would be taken over by Prudential Bache Securities, Inc. Griffin further alleged that Prudential Bache Securities, Inc., and two employees, branch manager, Bob Rogers, and broker, Mr. Bachurski, were highly promoting Technigen stock. Griffin further alleged that based upon these promotions, he began recommending clients buy Technigen in limited amounts, 1000-2000 shares, because of the risk common with stock in that price range.

Griffin further alleged the Claimant was a substantial, experienced, investor who understood the risks associated with all aspects of the stock market. Griffin further alleged that he told Claimant about Technigen, and that he should think it over. Griffin further alleged that Claimant then discussed a purchase of Technigen with Burstein, and thereafter, purchased 10,000 shares. Griffin maintained that Claimant called three days later, and spoke to Griffin about his desire to purchase another 10,000 shares of Technigen. Griffin alleged that he reiterated the risk involved with stocks in this price range, suggested Claimant at least diversify with another stock in the same price range, and suggested Mizlou. Griffin further alleged that he outlined the warrants and time premium associated with Mizlou, and that when the warrants were called, Claimant rejected Griffin's, recommendation to convert the warrants to common stock, and chose to sell the warrants at a significant loss.

RELIEF REQUESTED

Claimant requested damages of \$47,381.58.

Respondent Isadore S. Burstein requested that the Statement of Claim, against him, be dismissed, and that all costs and attorneys fees be assessed against Claimant.

Respondent John A. Griffin requested that the Statement of Claim, against him, be dismissed.

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:

- I. All claims against Respondents Isadore S. Burstein and John A. Griffin be and hereby are dismissed in all respects.

2. Respondents' motions to dismiss the claim on statute of limitations grounds be and hereby are denied.
3. Each party shall bear their respective costs, including attorneys fees.

FORUM FEES


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

2 sessions X \$400.00 = \$800.00 minus hearing session deposit of \$400.00 = net \$400.00 due.


The Claimant be and hereby is liable and shall pay to the NASD the sum of \$200.00 to represent the balance of the forum fees and the Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$200.00 to represent the balance of the forum fees.

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

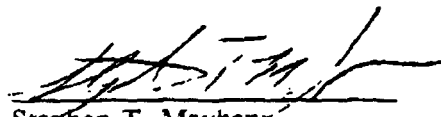
ARBITRATORS' SIGNATURES



Joseph R. Lally, Esq.
Public Arbitrator



D. Joan Sampieri
Public Arbitrator



Stephen T. Mayhew
Industry Arbitrator

Execution
Date of Decision: November 23, 1993

Date of Decision: December 1, 1993