

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mary J. Eandola

92-04288

Name of Respondents

Rickel & Associates, Inc.
Ken Rickel
Milton Hirsch

REPRESENTATION

For Claimant Mary J. Eandola ("Claimant"): Dan A. Druz, Esq., of the law firm of Caron and Koffler, Point Pleasant, New Jersey.

For Respondents Rickel & Associates, Inc. ("Rickel") and Ken Rickel ("Mr. Rickel"): Seth Taube, Esq. and Andrew J. Schwartz, Esq. of the law firm of McCarter & English, Newark, New Jersey.

For Respondent Milton Hirsch ("Hirsch"): Yasmyne Laberty, Esq.

CASE INFORMATION

Statement of Claim filed on: December 23, 1992.

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

Joint Statement of Answer filed by Respondents, Rickel, Mr. Rickel and Hirsch (collectively referred to as "Respondents") on: March 4, 1993.

Rickel's Submission Agreement signed on: April 1, 1993.

Mr. Rickel's Submission Agreement signed on: March 8, 1993.

Hirsch's Submission Agreement signed on: March 3, 1993.

HEARING INFORMATION

Pre-Hearing Conference: October 28, 1993 - one session

Hearing Dates/Sessions: December 20, 1993 - two sessions
April 20, 1993 - two sessions
April 21, 1993 - two sessions
May 20, 1993 - two sessions

Hearing location: NASD, Inc. - New York Office

CASE SUMMARY

Claimant alleged, among other things, that she was an unsophisticated investor with a modest income who supported several family members. Claimant alleged that Hirsch negligently failed to make any inquiry into her financial status and falsely represented his investment experience. Claimant alleged that she made clear to Hirsch that her inheritance money was to be invested conservatively to provide Claimant with a retirement nest egg.

Claimant alleged that Hirsch made unsuitable investments which were contrary to Claimant's investment objectives. Claimant alleged that Hirsch fraudulently opened option and margin accounts for Claimant without her knowledge, proper documentation or proper risk disclosure. Claimant alleged that Hirsch made unauthorized and discretionary trades in Claimant's account without having discretionary authority. Claimant alleged that Hirsch churned Claimant's account for the purpose of generating commissions. Claimant alleged that Hirsch misrepresented and omitted material facts regarding Claimant's investments. Claimant alleged that Respondents failed to provide a proper accounting of her account. Claimant alleged that Hirsch failed to repay upon demand a Twelve Thousand Dollar (\$12,000) personal loan.

Claimant alleged that Respondents failed to comply with the applicable rules and regulations of the NASD and the New York Stock Exchange. Claimant alleged that Respondents breached their fiduciary and contractual duty to Claimant. Claimant alleged that Mr. Rickel and Rickel failed to properly supervise the handling of her account.

Respondents categorically denied all allegations of wrongdoing. Respondents maintained that Claimant was a sophisticated investor seeking short term profits

from her investments. Respondents maintained that Claimant's income was fifty thousand dollars per year and her net worth was in excess of one million dollars. Respondents maintained that Claimant was not supporting members of her family. Respondents maintained that Hirsch's representation of his investment experience was accurate.

Respondents maintained that Claimant was aware of every position and authorized Hirsch to make every trade. Respondents maintained that Hirsch properly reviewed Claimant's financial status and investment objectives when the account was opened. Respondents maintained that no material misrepresentations or omissions were made to Claimant. Respondents maintained that Claimant was advised of the risks associated with option and margin accounts. Respondents maintained that Claimant signed the appropriate account opening, margin and option account agreement forms. Respondents maintained that the positions transferred into Claimant's account, were 75% margined. Respondents maintained that all of Claimant's investments were suitable in light of her objective of obtaining short term profits and her financial status. Respondents maintained that Claimant received substantial discounts on commissions. Respondents maintained that Claimant was kept informed about account activity via trade confirmations, monthly statements and profit-loss statements. Hirsch denied that he failed to repay any amount due upon the \$12,000 personal loan. Respondents maintained that they fully satisfied any fiduciary or contractual duty owed to Claimant and properly supervised the handling of her account.

RELIEF REQUESTED

Claimant requested actual damages of \$137,000 based on: Claimant's costs, expenses and reasonable attorneys' fees in pursuing the arbitration proceeding; and \$12,000 for repayment of the loan made to Hirsch. Claimant also requested punitive damages of \$50,000 based on Respondents wrongful conduct and to deter Respondents from engaging in such conduct in the future.

Respondents requested that Claimant's claim be dismissed in its entirety and that Panel award Respondents all costs and fees associated with defending this claim.

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 original remains on file with the NASD.

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. The Claimant's claim against Respondent Hirsch for failure to repay the TWELVE THOUSAND AND 00/100 DOLLAR (\$12,000) loan is dismissed without prejudice.
2. Respondents are jointly and severally liable to Claimant and shall pay to Claimant the sum of TWENTY-TWO THOUSAND FOUR HUNDRED THIRTEEN AND 00/100 DOLLARS (\$22,413); inclusive of interest.
3. Each party shall bear their own costs including attorneys' fees, except as specified herein.

FORUM FEES

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

1 pre-hearing conference X \$300 = \$300
8 sessions X \$750 = \$6,000
Total Due = \$6,300

Forum fees are assessed: against Claimant and Respondents equally. Claimant is assessed Forum Fees in the amount of \$3,150, however Claimant is entitled to offset this amount with her hearing session deposit of \$750 so the amount due from Claimant as Forum Fees is \$2,400.

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Respondents are jointly and severally assessed Forum Fees in the amount of \$3,150.

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

Concurring Arbitrator's Signature
Name



Joseph J. Arata, Esq.

Public/Industry

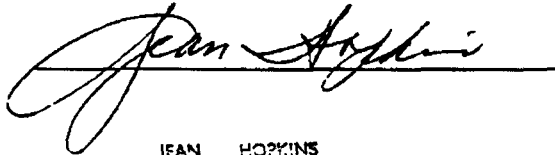
PUBLIC

NASD Date of Decision: June 22, 1994

STATE OF: New York
COUNTY OF: NEW YORK

S.S.:

On this 20th day of JUNE, 1994, before me personally appeared Joseph J. Arata, Esq. known and 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.

A handwritten signature in cursive script, appearing to read "Jean Hopkins", is written over a horizontal line.

JEAN HOPKINS
Notary Public, State of New York
No. 41-4652889
Qualified in Queens County
Certificate filed in New York County
Commission Expires 5-31-95

5-31-95

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Respondents are jointly and severally assessed Forum Fees in the amount of \$3,150.

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

Concurring Arbitrator's Signature

Name


Charles C. Marotta

Public/Industry

NASD Date of Decision: June 22, 1994

STATE OF: New York
COUNTY OF: NASSAU

S.S.:

On this 20 day of JUNE, 1994, before me personally appeared Charles C. Marotta known and 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.

A handwritten signature in cursive script, appearing to read "Marcella C. Granholm", written over a horizontal line.

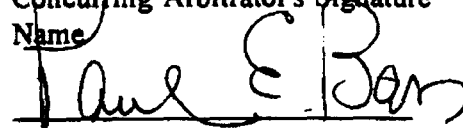
MARCELLA C. GRANHOLM
Notary Public, State of New York
No. 4763423
Qualified in Nassau County
Commission Expires March 30, 1996

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Respondents are jointly and severally assessed Forum Fees in the amount of \$3,150.

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

Concurring Arbitrator's Signature
Name


Paul E. Barr

Public Industry

NASD Date of Decision: June 22, 1994

STATE OF: New York
COUNTY OF:

S.S.:

On this 20TH day of JUNE, 1994, before me personally appeared **Paul E. Barr** known and 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.

A handwritten signature in black ink, appearing to read "Evan R. Katz", is written over a horizontal line.

EVAN R. KATZ
A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Dec. 21, 1998