

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Michael Kruke

93-00134

Name of Respondents

Andrew A. Lanyi  
Ladenburg, Thalmann & Co., Inc.

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REPRESENTATION

For Claimant, Michael Kruke: Joseph J. Dehner, Esq. of Frost & Jacobs.

For Respondents, Andrew A. Lanyi and Ladenburg, Thalmann & Co., Inc.:  
Stephen L. Ratner, Esq. of Rosenman & Colin.

CASE INFORMATION

Statement of Claim filed: January 11, 1993.

Claimant's Submission Agreement signed on: January 8, 1993.

Statement of Answer filed by Respondents, Andrew A. Lanyi and Ladenburg,  
Thalmann & Co., Inc. on: March 11, 1993.

Respondent, Ladenburg, Thalmann & Co., Inc.'s Submission Agreement signed  
on: March 8, 1993.

Respondent, Andrew A. Lanyi's Submission Agreement signed on: March 4,  
1993.

HEARING INFORMATION

Hearing Dates/Sessions: August 16, 1993 - Three Sessions.

Hearing Location: American Arbitration Association - Cincinnati, Ohio.

### CASE SUMMARY

Claimant alleges that he was referred by a friend to Respondent, Andrew A. Lanyi ("Lanyi") for professional investment advice. Claimant alleges that he discussed with Mr. Lanyi his desire to invest his IRA in safe investments and that growth was the investment objective for Claimant's personal account. Claimant alleges that Lanyi told him that the portfolio would be invested in diversified companies with excellent earnings and growth potential. Claimant alleges that Lanyi invested his portfolio in highly speculative stocks. Claimant alleges that when he questioned Lanyi about these purchases, he was told not to worry because the investments were made for the long run, and assured the Claimant that these were excellent stock picks. Claimant alleges that Lanyi made an unauthorized purchase of XIRCOM stock in his account and that Lanyi denied that the purchase was unauthorized. Claimant alleges that he attempted to have Respondent, Ladenburg, Thalmann & Co., Inc. (LT) address his grievances, but that LT refused to do so. Claimant alleges that LT failed to supervise Lanyi in his mishandling of his accounts.

Respondents maintain that Claimant made all the investment decisions in the accounts. Respondents maintain that the Claimant's investment objectives for each of the accounts was growth. Respondents maintain that there was not ever any discretion exercised by them with respect to the Claimant's accounts and that the Claimant was always aware that he was investing in speculative, small capitalization over-the-counter securities.

Respondents denied that the purchase of XIRCOM was unauthorized and maintain that the Claimant not only authorized the purchase of the stock, Claimant confirmed the purchase by telephone and in writing. Respondents assert that Claimant only complained when he did not like the stock's short term performance.

### RELIEF REQUESTED

Claimant requested damages in the amount of \$65,488.48 plus a reasonable return that would have been earned had the accounts been invested properly, plus attorney's fees, costs and punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that the Respondents be awarded the costs and expenses of this arbitration.

**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.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Statement of Claim is hereby dismissed in its entirety.
- 2) Each party shall bear their respective costs of this action including attorney's fees.
- 3) The Claim for punitive damages is hereby denied.

**FORUM FEES**

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

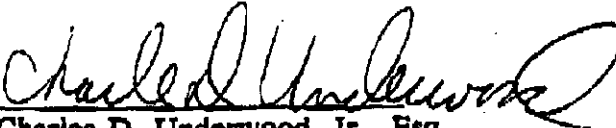
\$150.00	Non-refundable filing fee
\$1,500.00	Hearing Session fees (3 sessions x \$500.00)

- 1) Total forum fees in the amount of \$1,650.00 are hereby divided equally between Claimant and Respondents.
- 2) Therefore, Claimant is hereby assessed forum fees in the amount of \$825.00. Claimant is entitled to offset this amount with the \$650.00 previously deposited with the NASD, Inc. Claimant is directed to pay the balance of \$175.00 to the NASD, Inc.
- 3) Respondents are jointly and severally assessed forum fees in the amount of \$825.00 and shall pay this amount to the NASD, Inc.

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Concurring Arbitrator's Signature  
Name

Public Chairperson

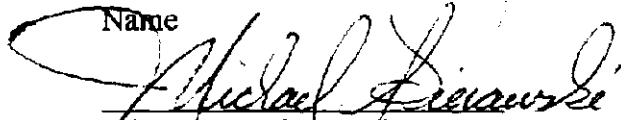
  
Charles D. Underwood, Jr., Esq.

Date of Decision: November 2, 1993

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Concurring Arbitrator's Signature

Name

  
Michael A. Sierawski

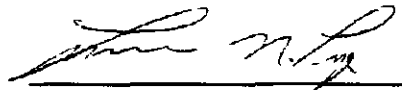
Industry Arbitrator

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Concurring Arbitrator's Signature  
Name

Public Arbitrator

  
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Timothy N. Tye, Esq.

Date of Decision: November 2, 1993