

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James Molinaro Pension Plan,
James J. Molinaro, Trustee

93-00306

Name of Respondents

Avin E. Bakal
Marsha A. Bakal
Phyllis Henderson
Berkeley Securities Corporation

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 28, 1993, Claimant James Molinaro, who appeared Pro Se, alleged that Respondent Avin Bakal, registered representative at Respondent Berkeley Securities Corporation, was given his pension account to service in March, 1991 whereby Respondent Avin Bakal called Claimant to discuss the various holdings in his account, at which time, Respondent Avin Bakal said he would do a research on his holdings and make a suggestion. Claimant further alleged that Respondent Avin Bakal suggested that since many of the stocks in Claimant's account were so called losers, he recommended that those stocks be sold and the money be put into a hot stock by the name of Aquasciences Int. Inc. Claimant contended that Respondent Avin Bakal said that the so called loser stocks that he would sell represent a small amount of money and after Claimant sees what he does with this money, Claimant would trust him with larger investments, at which time, Claimant reminded Respondent Avin Bakal that the money he was investing was for his pension plan whereby Claimant could not afford to lose it. Claimant further contended that on September 23 and September 24, 1991 Respondent Avin Bakal sold several of his stocks including Bio Technology General Corp. for \$8.00 per share, which eventually went to \$13.00 a share whereby this was the stock that Claimant instructed Respondent Avin Bakal not to sell. Claimant asserted that it took many weeks before he found out what Respondent Avin Bakal had done, at which time, Respondent Avin Bakal said that the Aquascience stock, although it is lower in value than he paid, within time would do very good whereby as time went on this stock went lower. Claimant further asserted that as timw went on he told Respondent Avin Bakal that

he would not give him any more time and he instructed Respondent Avin Bakal to make his account value the same as it was when he sold his portfolio in September 1991, even if he had to take the money out of his pocket. Claimant further alleged that after many calls to his office, Respondent Berkeley Securities Corporation put him in touch with a Senior Representative Respondent, Marsha Bakal who told Claimant that somebody sold short millions of the Aquascience stock which meant they had to buy all this stock they could to cover their investment and this will make the stock go up, at which time, Claimant told Respondent Marsha Bakal that he did not want anymore promises and that he would like his account made whole. Claimant further alleged that Respondents Avin Bakal and Marsha Bakal's inappropriate handling of his account and Respondents Berkeley Securities Corporation and Phyllis Henderson's failure to properly supervise, caused Claimant to incur losses.

Respondents Berkeley Securities Corporation, Avin Bakal, Marsha Bakal and Phyllis Henderson by and through their Secretary/Treasurer, Phyllis Henderson, maintained that Claimant James Molinaro opened his account at Respondent Berkeley Securities Corporation in March, 1989 and after the original broker of record resigned his position with Respondent Berkeley Securities Corporation, Respondent Avin Bakal was assigned to the account in March, 1991, at which time, Claimant requested Respondent Avin Bakal to compile a list of the stocks he owned and obtain the then current market prices whereby on March 14, 1991 Respondent Phyllis Henderson, at Respondent Avin Bakal's request, personally, researched the positions in Claimant's account and sent him a letter advising him of the requested information. Respondents further maintained that because of Claimant's investment experience and history, Respondent Avin Bakal felt comfortable telling Claimant about a growth situation that he felt was a promising investment opportunity, at which time, Respondent Avin Bakal told Claimant Aqua Sciences International, Inc. and recommended that he purchase shares. Respondents contended that Respondent Avin Bakal maintains that he specifically discussed BioTechnology General Corp. with Claimant and because it was then trading at \$8.00 per share, it was agreed that it would be a good time to sell whereby Claimant waited almost a full year, after Respondent Avin Bakal resigned from Respondent Berkeley Securities Corporation, to make claim that this sale was unauthorized. Respondents further contended that when Respondent Avin Bakal resigned, Respondent Marsha Bakal assisted some of his customers whereby Claimant spoke to Respondent Marsha Bakal about AquaSciences International, Inc. and then sent Claimant, via facsimile transmission, information about AquaSciences International which was the extent of Respondent Marsha Bakal's involvement with Claimant's account. Respondents asserted that this investment is very consistent with Claimant's investment history and Claimant is a seasoned investor who has an established history of investments in speculative, growth situations whereby Claimant directed his own account and could sustain a degree of risk, thus the claim should be dismissed.

RELIEF REQUESTED

Claimant James J. Molinaro requested \$4,000.00 in actual damages and \$1,000.00 in Punitive damages.

Respondents Berkeley Securities Corporation, Avin Bakal, Marsha Bakal and Phyllis Henderson requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Linda Solway, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 21, 1993 and by the Respondents on April 5, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claim of Claimant James J. Molinaro against Respondents Avin Bakal, Marsha A. Bakal, Phyllis Henderson and Berkeley Securities Corporation is dismissed.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant James J. Molinaro shall be retained by the NASD, Inc.

AFFIRMATION

I, LINDA SOLWAY, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Linda Solway

DATE OF DECISION: August 13, 1993

STATE OF: New York

SS:

COUNTY OF: New York

On this 6 day of August 19 93, before me personally appeared Linda Solway to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

Mal O. [Signature]

MARK G. OLIV
Notary Public, State of New York
No. 4226193
Qualified in Queens County
Commission Expires April 20, 19 94