

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Mario Rastrelli

93-00445

Name of Respondents

G K Scott & Co. Inc.  
Comprehensive Capital Corp.  
Elizabeth A. Kenney

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**REPRESENTATION**

For Claimant Mario Rastrelli ("Rastrelli"): Charles E. Steinberg, Esq., Stuart, Fl.

For Respondents G K Scott & Co. Inc. ("GKS"), Comprehensive Capital Corp. ("CCC"), and Elizabeth A. Kenney ("Kenney"): William S. Isenberg of Latona & Isenberg, Fort Lauderdale, Fl..

**CASE INFORMATION**

Statement of Claim filed: February 8, 1993. Claimant's Submission Agreement signed: January 25, 1993.

Statement of Joint Answer filed by Respondents on: April 9, 1993. Respondent GKS's Submission Agreement signed on: April 27, 1994 by Fred Cirillo as Compliance officer of GKS; Respondent CCC's Submission Agreement signed on: April 27, 1994 by Fred Cirillo as Compliance officer of CCC; Respondent Kenney's Submission Agreement signed on: April 27, 1994.

**HEARING INFORMATION**

On April 26 & 27, 1994, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

### **CASE SUMMARY**

Claimant alleged that Respondent, Kenney, breached her fiduciary duty of trust reposed in her by making Claimants account a discretionary account through the use of a power of attorney in her favor executed by Claimant; Respondent, Kenney, then made unsuitable investments and churned the account at an annualized rate of 7.3 times; Respondents, GKS and CCC, are liable for their lack of supervision of the account based on the Securities Act and doctrine of respondent superior.

Respondents, denied all allegations of wrongdoing and alleged that, Respondent Kenney invested Claimants funds pursuant to a written Power of Attorney in accordance with Claimants investment objectives and did not act improperly; there was no failure to supervise by GKS; Claimant did not notify GKS of any improprieties in the account until after the account was transferred; and, that CCC did not agree by contract or any operation of law to assume liability for the account. Respondents set forth the affirmative defenses of: Failure to mitigate damages; failure to exercise due diligence; comparative negligence; and, unclean hands.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$23,708; pre judgement interest of \$10,905; attorneys fees of \$15,000 and punitive damages of \$250,000.

Respondents requested dismissal of all claims, attorneys fees and costs.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

### **AWARD**

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

1. Respondents, GKS, CCC and Kenney, are found not liable and, therefore, all claims against them are hereby dismissed.

- Date of Decision: 5-18-94