

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Pamela Ware, and  
Pamela Ware, Trustee for the  
Pamela Ware Revocable Living  
Trust DTD 7-21-87,

Claimants,

v.

No. 93-00479

Kenneth Osler,

Respondent.

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### **REPRESENTATION OF PARTIES**

Claimants Pamela Ware and Pamela Ware, Trustee for the Pamela Ware Revocable Living Trust DTD 7-21-87 ("Claimants") were represented by Walter L. Baumgardner, Esq. of Musilli, Baumgardner, Wagner & Parnell, P.C. located in St. Clair Shores, Michigan.

Respondent Kenneth Osler ("Respondent") was represented by Miles D. Hart, Esq. of Hertz, Schram & Saretsky, P.C. located in Bloomfield Hills, Michigan.

### **CASE INFORMATION**

The Statement of Claim was filed on or about February 8, 1993.

The Amended Statement of Claim was filed on or about August 20, 1993.

Claimants' Submission Agreement was signed on February 2, 1993.

The Statement of Answer was filed on or about July 6, 1993.

Respondent's Submission Agreement was signed on June 7, 1993.

### **HEARING INFORMATION**

The hearing was held on September 9, 1998 for two (2) sessions and September 10, 1998 for

three (3) sessions. The hearing location was Southfield, Michigan.

### **CASE SUMMARY**

This claim arises out of a securities account maintained by Claimants. At all relevant times, Respondent served as Claimants' account executive. All transactions occurred while Respondent was employed by Thomson McKinnon Securities, Inc.

In the Statement of Claim, Claimants contended that Respondent recommended and sold various limited partnership investments which proved to be worthless, illiquid, and unsuitable. Claimants further alleged that Respondent misrepresented information concerning the value and safety of these limited partnership investments, as well as other securities purchased in the account. Claimants also asserted that Respondent churned the account for the sole purpose of generating large commissions. Claimants contended that Respondent had Claimants speculate in stock options which Claimants neither understood or believed to be suitable.

Respondent denied all liability in the Statement of Answer on file. Respondent contended that all trading activity at issue was suitable with Claimants' expressed investment objectives and financial background. Respondent maintained that he made full disclosure regarding all investments. Respondent asserted that all securities traded in the account were authorized by Claimants' appointed representative and that all transactions were confirmed through a confirmation statement as well as monthly statements. Respondent contended that Claimants controlled the volume and frequency of trading in the account.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested: actual damages in the amount of \$300,000, return of all commissions, plus interest, reasonable attorney fees, costs, punitive damages, triple damages and such other relief as deemed just and equitable.

Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

Pursuant to an Order of Judge Avern Cohn of the United States District Court for the Eastern District of Michigan, Claimants are permanently enjoined from pursuing any claims for investments purchased prior to February 3, 1987.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **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:

- (1) That the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (3) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were five (5) hearing sessions x \$1,000 = \$5,000 in forum fees. Pursuant to Rule10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited by the Claimants.

Pursuant to Rule10332(c) of the Code, Claimants are liable for and shall pay forum fees in the amount of \$4,000 (all forum fees - hearing session deposit).

Pursuant to Rule10319 of the Code, Claimants are liable for and shall pay postponement fees in the amount of \$1,000.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures:

**\s\ Barry Goldman, Esq.**

Barry Goldman, Esq.  
Chairperson  
Public Arbitrator

**September 23, 1998**

Dated:

**\s\ Hudson Mead, Esq.**

Hudson Mead, Esq.  
Panelist  
Public Arbitrator

**September 21, 1998**

Dated:

**\s\ John R. Main**

John R. Main  
Panelist  
Industry Arbitrator

**September 21, 1998**

Dated:

For NASD Regulation use only:

Date award served on parties:

**September 24, 1998**