

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Treena Sokol

Hans Kaemlein

Ronnie Berger

Matthew Matza

Michael Kleban

Barbara Frank

93-01623

Dennis Schweber

93-01624

H. Thomas Ferstl

93-01628

93-01631

93-01632

93-01633

93-01634

93-01635

Name of Respondents

Joseph R. Huard, Jr.

Shamrock Partners, Ltd.

Brian G. McGowan

Craig Medoff

Kemper Securities Inc.

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REPRESENTATION

For Claimants Treena Sokol, Hans Kaemlein, Ronnie Berger, Matthew Matza, Michael Kleban, Barbara Frank, Dennis Schweber and H. Thomas Ferstl (hereinafter collectively referred to as "Claimants") appeared Scott Zucker, Esq. and Andrew Schultz, Esq., Great Neck, NY.

Respondents Shamrock Partners ("Shamrock"), Joseph R. Huard, Jr. ("Huard"), and Kemper Securities Inc. ("Kemper") settled their disputes with Claimants prior to the hearing. Therefore, no representative appeared for any of these Respondents.

Respondent Brian G. McGowan appeared pro se.

Respondent Craig Medoff did not appear at the hearing.

### **CASE INFORMATION**

The Statements of Claim of each Claimant was filed on April 23, 1993.

Claimant Treena Sokol's Submission Agreement was executed on January 20, 1993.

Claimant Hans Kaemlein's Submission Agreement was executed on January 21, 1993.

Claimant Ronnie Berger's Submission Agreement was executed on January 20, 1993.

Claimant Matthew Matza's Submission Agreement was executed on July 19, 1994.

Claimant Michael Kleban's Submission Agreement was executed on January 22, 1993.

Claimant Barbara Frank's Submission Agreement was executed on January 20, 1993.

Claimant Dennis Schweber's Submission Agreement was executed on January 20, 1993.

Claimant H. Thomas Ferstl's Submission Agreement was executed on January 21, 1993.

Respondents Shamrock and Huard's Statement of Answer was filed on July 23, 1993 and each executed the Submission Agreement on July 16, 1993.

Respondent Brian McGowan's Statement of Answer was filed on July 21, 1993 and his Submission Agreement was executed on July 21, 1993.

Respondent Kemper's Statement of Answer was filed on July 6, 1993 and the Submission Agreement was executed on June 21, 1993.

Respondent Craig Medoff's Statement of Answer was filed on July 16, 1993. Respondent Medoff did not execute a Submission Agreement.

### **HEARING INFORMATION**

Pre-Hearing Conference:    May 17, 1994 - One Session/One Arbitrator  
   July 12, 1994 - One Session/Two Arbitrators

Hearing Dates/Sessions:	August 8, 1994	-	One Session
	August 9, 1994	-	One Session
	August 10, 1994	-	Two Sessions

All hearings were held at the National Association of Securities Dealers, Inc. offices located in New York City, New York.

### **CASE SUMMARY**

The Claimants alleged that they each had very limited investment sophistication, particularly very limited experience in investing in "penny stocks". Claimants stated that their investment objective at all times was safety of principal with preservation of capital. Specifically, Claimants alleged that Theodore Briedbart ("Briedbart") created a scheme whereby Briedbart would divert Claimants funds; that Briedbart acted as an agent and a liaison for Respondent Craig Medoff ("Medoff"); and that at all times, Briedbart and Medoff acted in bad faith and with total disregard for the Claimants. It was also alleged by the Claimants that the Respondents allegedly falsified information and forged the signature on Claimants' new account forms.

Further, Claimants alleged that Briedbart and Medoff continually and constantly misrepresented facts concerning their positions with Shamrock Partners ("Shamrock"); that Respondent Briedbart acted as an agent on behalf of Respondent Medoff to perpetrate distortions, misrepresentations, fabrications, and falsehoods with respect to the investments in a penny stock known as Regency International, Inc. ("Regency"); and that Claimants purchased Regency as a result of Respondent Medoff's guarantee that Claimants would more than double their investments within 90 - 120 days. Claimants also alleged that Respondent Huard was responsible for overseeing the activities of Medoff, McGowan and Briedbart and failed to diligently supervise these individuals, thereby permitting them to engage in fraudulent, illegal and harmful trading practices alleged herein.

Moreover, Claimants alleged that all Respondents misrepresented the inherent risks associated with the investment, and/or failed to disclose such risks when they knew or should have known that Claimants would, and did, rely on the misrepresentations and omissions in connection with any decision that they did make to purchase the Regency investment. Claimants alleged that the Respondents are jointly and severally liable to the Claimants under the legal theories of fraud, unsuitability, breach of fiduciary duty and negligence.

Respondents Shamrock and Huard denied all allegations of wrongdoing asserted against them in Claimants' Statements of Claim. Respondents Shamrock and Huard maintained that the claims filed against the Respondents were filed by investors who purchased the stock of Regency International, Inc. through Craig Medoff, a registered broker operating a franchise office under the name of

Shamrock solely for the purpose of clearing trades. Respondents Shamrock and Huard further maintained that Medoff was at no time an employee of Shamrock, but acted as an independent contractor who rented his own office and paid all of his operating expenses out of his own business; that Medoff had his own customers and generated his own orders, which were then submitted to Shamrock who would review them and then pass them along to Kemper for clearance; and that neither Shamrock nor Huard had any contact with any of the Claimants prior to the receipt of the Medoff generated orders.

Respondents Shamrock and Huard denied that they falsified information on new account forms as to income or net income; admitted that Shamrock acted as an introducing broker for Claimants; and admitted that Huard is Executive Vice President of Shamrock. These Respondents asserted that they fully performed their limited role as an introducing broker in executing and effecting trades in the Claimants' accounts, in connection with which it had no direct contact with any Claimant regarding his or her investment decisions to purchase Regency stock. Further, Respondents Shamrock and Huard asserted that since Shamrock was not the principal or employer of Medoff, McGowan or Briedbart and clearly disclosed to each Claimant its limited role as a clearing broker, it cannot be held liable on the theory of respondeat superior and since Respondents Shamrock and Huard had no knowledge of the alleged wrongful conduct of Medoff, McGowan and/or Briedbart and provided substantial assistance in perpetrating that wrong, they cannot be held liable as an aider and abettor.

Respondent Brian McGowan denied all allegations asserted against him in the claims filed by the Claimants. Respondent McGowan maintained that Shamrock filed his registration application on March 17, 1992. The vast majority, if not all, of the trading in Regency took place prior to this date. Respondent further maintained that prior to that date he worked part-time in an administrative capacity on a consulting basis; that his work consisted of answering the phone, opening the mail, sending Fed Exes, paying bills and reconciling the checkbook; and that his role never was to solicit any investments or any securities transactions from any of the Claimants. Respondent McGowan also maintained that each of the Claimants was aware of the fact that he never solicited a purchase or sale of a security from them, never gave any investment advice nor made any investment recommendations to them, and, therefore, requested that the claims be dismissed as to allegations relating to him.

Respondent Craig Medoff generally denied each and every allegation in the Statement of Claim of each Claimant.

As affirmative defenses, Respondent Medoff asserted that the Claimants failed to timely object to investments and ratified the transactions in their accounts; that Claimants failed to mitigate their damages; that losses sustained were the result of nationwide economic events beyond Respondent Medoff's control; and that Claimants' claims are barred by the doctrines of estoppel, waiver and laches.

Further, Respondent Medoff maintained that any damages suffered by the Claimants resulted from the acts or omissions of certain third parties for whose conduct Respondent Medoff is not responsible; that Claimants failed to state a cause of action upon which relief could be granted; and that Claimants claims are barred completely, or in part, because the damages claimed to have been sustained by the Claimants were caused solely, or contributed to, by claimants own negligent and willful conduct.

Respondent Kemper Securities, Inc. maintained that it had no knowledge or information on which to form a belief as to the truth or untruth of the allegations of wrongdoing attributed to the other Respondents, and therefore denied all such allegations. With respect to the claims asserted against Kemper, Kemper admits that it acted as the clearing broker and issued confirmations and statements to the Claimants, but denies any and all other allegations and assertions upon which the Claimants attempt to hold Kemper liable for the alleged actions of the Shamrock respondents or Briedbart. Kemper maintained that it fully performed its limited role as a clearing broker in executing and effecting trades in the Claimants' accounts, in connection with which it had no direct contact with any Claimant regarding his or her investment decisions to purchase Regency stock. Further, Kemper maintained that since Kemper was not the principal or employer of the Shamrock Respondents or Briedbart and clearly disclosed to each Claimant its limited role as clearing broker, it cannot be held liable on the theory of Respondeat Superior and since the Claimants have not alleged wrongful conduct of the Shamrock Respondents and/or Briedbart and provided substantial assistance in perpetrating that wrong, it cannot be held liable as an aider and abettor.

Kemper submitted its Counterclaim against Claimants Ferstl, Kleban, Kaemmlein, Frank and Matza, alleging that in executing the Customer Agreement, these Claimants acknowledged and agreed that Kemper shall not be responsible to them for any loss resulting from the conduct on the part of any third party, including, without limitation, Shamrock, which introduced the accounts of these Claimants to Kemper and, further agreed to indemnify and hold Kemper harmless from and against all losses liabilities and damages, including attorneys fees, incurred by Kemper as a result of any actions taken or not taken by the brokers of these Claimants.

As and for its Cross-Claim against Shamrock Partners, Inc., Kemper submitted that pursuant to Article VI of the Clearing Agreement between Shamrock and Kemper, Shamrock agreed to indemnify and hold Kemper harmless from and against all claims, demands, proceedings, suits and actions together with all liabilities, losses, expenses and costs resulting therefrom in connection with any account introduced account arising out of the Clearing Agreement.

### **RELIEF REQUESTED**

Claimant Treena Sokol requested an award of \$41,625.00, plus additional interest on the award from the date of the award until paid, plus attorney fees, reimbursement of filing fees and costs in connection with the pursuit of this dispute and any additional remedy deemed appropriate.

Claimant Hans Kaemmlein requested an award of \$15,625.00, plus additional interest on the award from the date of the award until paid, plus attorney fees, reimbursement of filing fees and costs in connection with the pursuit of this dispute and any additional remedy deemed appropriate.

Claimant Ronnie Berger requested an award of \$42,212.00, plus additional interest on the award from the date of the award until paid, plus attorney fees, reimbursement of filing fees and costs in connection with the pursuit of this dispute and any additional remedy deemed appropriate.

Claimant Matthew Matza requested an award of \$49,313.00, plus additional interest on the award from the date of the award until paid, plus attorney fees, reimbursement of filing fees and costs in connection with the pursuit of this dispute and any additional remedy deemed appropriate.

Claimant Michael Kleban requested an award of \$9,750.00, plus additional interest on the award from the date of the award until paid, plus attorney fees, reimbursement of filing fees and costs in connection with the pursuit of this dispute and any additional remedy deemed appropriate.

Claimant Barbara Frank requested an award of \$25,625.00, plus additional interest on the award from the date of the award until paid, plus attorney fees, reimbursement of filing fees and costs in connection with the pursuit of this dispute and any additional remedy deemed appropriate.

Claimant Dennis Schweber requested an award of \$8,870.00, plus additional interest on the award from the date of the award until paid, plus attorney fees, reimbursement of filing fees and costs in connection with the pursuit of this dispute and any additional remedy deemed appropriate.

Claimant H. Thomas Ferstl requested an award of \$327,000.00, plus additional interest on the award from the date of the award until paid, plus attorney fees, reimbursement of filing fees and costs in connection with the pursuit of this dispute and any additional remedy deemed appropriate.

At the hearing, proof was presented as to the actual damages allegedly sustained by the Claimants. Claimants requested that any award in Claimants' favor be rendered pursuant to the damage calculations as presented at the hearing.

Respondents Shamrock and Huard requested that the arbitrators dismiss each of the Statements of Claim on the merits and with prejudice, and assess all Claimants the costs of this proceeding, including all filing and forum fees as well as all attorneys fees incurred by Shamrock and Huard as a result of the defense of this proceeding.

Respondent Brian McGowan requested that each claim asserted against him be dismissed.

Respondent Craig Medoff requested a denial of all of the claims asserted by the Claimants in their Statement of Claim.

On the basis of Kemper's Statement of Answer and Counterclaim, Kemper requested that the arbitrators dismiss the Statement of Claim on the merits and with prejudice, enforce Kemper's contractual right to indemnification against Ferstl, Kleban, Kaemmlein, Frank and Matza and assess all Claimants the costs of this proceedings, including all filing and forum fees as well as all attorneys fees incurred by Kemper as a result of the defense of this proceeding. On the basis of Kemper's Cross-Claim, Kemper requested that the arbitrators enforce Kemper's contractual right of indemnification against Shamrock.

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

At the hearing, Claimants' counsel, Andrew Schultz, Esq., advised the panel that Claimants had entered into settlement agreements with Shamrock Partners, Ltd., Joseph Huard, Kemper Securities, Inc., and Brian McGowan. Additionally, all claims as to Theodore Briedbart were stayed by Court Order of the Supreme Court, New York County. Claimants' advised the panel that they wished to proceed against the sole remaining respondent, Craig Medoff.

The arbitration panel made the following rulings as to Respondent Medoff who filed an answer in this arbitration, but failed to file or present a properly executed Submission of the dispute to NASD Arbitration (i.e. Submission Agreement) and failed to appear at the three (3) New York Evidentiary hearings conducted in this matter without obtaining any adjournment/ postponement thereof:

- (1) Pursuant to Section 1 of the NASD Code of Arbitration Procedure ("Code") the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Medoff.
- (2) The panel found that Medoff was a person associated with an NASD member namely, Shamrock Partners, Ltd. at the time this controversy arose. Consequently, the panel found personal jurisdiction over Medoff pursuant to Section 12 (a) of the Code. Additionally, Medoff executed a Form U-4 requiring him to arbitrate at this forum upon demand of the Customer Claimants.

- (3) In view of (2) above, Medoff was required to execute and file with the NASD a submission agreement pursuant to Section 25(b) of the Code. In this regard the panel found that the NASD properly served the Claimants' claims upon Medoff pursuant to Section 25 (a) of the Code.
- (4) Finally, the panel found that the NASD, pursuant to Sections 21, 26 and 29 of the Code, provided Medoff with "due notice" of all hearings conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with these hearings without Medoff whose absence was, as stated previously, unexcused.

### **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 all remaining issues submitted for determination as follows:

1. Respondent Medoff be and hereby is liable and shall pay to Claimant Treena Sokol the sum of \$41,750.00, plus interest at the present statutory rate in the State of New York of 9% from the date of the decision until the award is satisfied.
2. Respondent Medoff be and hereby is liable and shall pay to Claimant Hans Kaemlein the sum of \$15,625.00, plus interest at the present statutory rate in the State of New York of 9% from the date of the decision until the award is satisfied.
3. Respondent Medoff be and hereby is liable and shall pay to Claimant Ronnie Berger the sum of \$32,762.00, plus interest at the present statutory rate in the State of New York of 9% from the date of the decision until the award is satisfied.
4. Respondent Medoff be and hereby is liable and shall pay to Claimant Matthew Matza the sum of \$49,312.50, plus interest at the present statutory rate in the State of New York of 9% from the date of the decision until the award is satisfied.
5. Respondent Medoff be and hereby is liable and shall pay to Claimant Michael Kleban the sum of \$9,980.48, plus interest at the present statutory rate in the State of New York of 9% from the date of the decision until the award is satisfied.
6. Respondent Medoff be and hereby is liable and shall pay to



Claimant Barbara Frank the sum of \$24,925.00, plus interest at the present statutory rate in the State of New York of 9% from the date of the decision until the award is satisfied.

7. Respondent Medoff be and hereby is liable and shall pay to Claimant Dennis Schweber the sum of \$8,855.00, plus interest at the present statutory rate in the State of New York of 9% from the date of the decision until the award is satisfied.
8. Respondent Medoff be and hereby is liable and shall pay to Claimant H. Thomas Ferstl the sum of \$330,250.00, plus interest at the present statutory rate in the State of New York of 9% from the date of the decision until the award is satisfied.
9. All claims for pre-award interest be and hereby are denied.
10. All other claims be and hereby are denied.
11. Except as set forth in the "Forum Fees" portion of this award, each party shall bear their respective costs, including attorneys fees.

#### **FORUM FEES**

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

1 pre-hearing conference (1 arbitrator) x \$ 300.00	=	\$ 300.00 due.
1 pre-hearing conference (2 arbitrators)x \$1000.00	=	\$1000.00 due.

4 sessions X \$1000 = \$4,000 minus Claimants hearing session deposits of \$3150.00 = \$850.00 due.

1. Kemper Securities, Inc. be and hereby is liable and shall pay to the NASD in the sum of \$300.00, representing the fee assessed for the May 17, 1994 in-person pre-hearing conference held with the Chairperson.
2. Shamrock Partners, Ltd. and Joseph Huard be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$1000.00, representing the fee assessed for the July 12, 1994 in-person pre-hearing conference held with arbitrators Kogan and Carey presiding. However, Joseph Huard previously deposited \$600.00 with the NASD. Therefore, the balance due and owing jointly and severally to the NASD is \$400.00.

3. Claimants Sokol, Kaemmlin, Berger, Matza, Kleban, Frank, Schweber, and Ferstl be and hereby are liable in the sum of \$4,000.00 representing the fee assessed for four hearing sessions conducted. However, Claimants previously deposited the sum of \$3,150.00 with the NASD. Therefore, the balance due and owing the NASD from these Claimants, jointly and severally, is \$850.00.

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

Concurring Arbitrators' Signatures

Name



Simon S. Kogan, Esq.  
Chairperson - Public Arbitrator

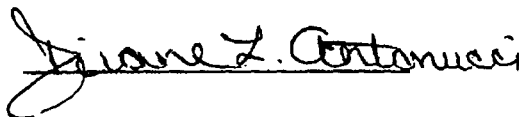
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Neil Carey  
Public Arbitrator

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Joseph DaGrosa  
Industry Arbitrator

STATE OF New York

COUNTY OF New York

On this 31<sup>st</sup> day of October, 1994, before me personally appeared Simon S. Kogan known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.



DIANE L. ANTONUCCI  
Notary Public, State of New York  
No. 01AN5024527  
Qualified in Orange County  
Commission Expires March 14, 1996

Date of Decision: November 11, 1994

3. Claimants Sokol, Kaemmmlein, Berger, Matza, Kleban, Frank, Schweber, and Ferstl be and hereby are liable in the sum of \$4,000.00 representing the fee assessed for four hearing sessions conducted. However, Claimants previously deposited the sum of \$3,150.00 with the NASD. Therefore, the balance due and owing the NASD from these Claimants, jointly and severally, is \$850.00.

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

Concurring Arbitrators' Signatures

Name

\_\_\_\_\_  
Simon S. Kogan, Esq.  
Chairperson - Public Arbitrator

\_\_\_\_\_  
*Neil Carey*  
Neil Carey  
Public Arbitrator

\_\_\_\_\_  
Joseph DaGrosa  
Industry Arbitrator

STATE OF

COUNTY OF

On this 13<sup>th</sup> day of October, 1994, before me personally appeared NEIL CAREY known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

\_\_\_\_\_  
*Chal L. Dushva*  
CHAL L. DUSHVA  
My Comm. Expiration Date 6/30/98

Date of Decision: November 11, 1994

3. Claimants Sokol, Kaemlein, Berger, Matza, Kleban, Frank, Schweber, and Ferstl be and hereby are liable in the sum of \$4,000.00 representing the fee assessed for four hearing sessions conducted. However, Claimants previously deposited the sum of \$3,150.00 with the NASD. Therefore, the balance due and owing the NASD from these Claimants, jointly and severally, is \$850.00.

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

Concurring Arbitrators' Signatures  
Name

\_\_\_\_\_  
Simon S. Kogan, Esq.  
Chairperson - Public Arbitrator

\_\_\_\_\_  
Neil Carey  
Public Arbitrator

\_\_\_\_\_  
Joseph DaGrosa  
Industry Arbitrator

STATE OF

COUNTY OF

On this 4<sup>th</sup> day of OCTOBER, 1994, before me personally appeared Joseph DaGrosa known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Deborah DeJesus

Date of Decision: November 11, 1994

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996