

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimants

Fred and Joan Boeheim

vs.

Case No.  
93-01666

Name of Respondents

Westmoreland Capital Corporation  
Terry J. King

---

**REPRESENTATION**

For Claimants, Fred and Joan Boeheim, ("Claimants"), Eric A Bloom, Esq. located in Buffalo, New York.

For Respondent, Westmoreland Capital Corp., ("WCC"), Robert J. Lane, Esq. from the law firm of Hodgson, Russ, Andrews, et al. located in Buffalo, New York.

For Respondent, Terry J. King, ("King"), Jeffrey A. Lazroe, Esq. located in Buffalo, New York.

**CASE INFORMATION**

Statement of Claim was filed on March 31, 1993.

Claimants' Motion to Preclude was filed on July 30, 1993 and October 6, 1993.

Stipulation of Dismissal was filed on October 12, 1993.

Claimants' Submission Agreement was signed on April 19, 1993.

Statement of Answer and Counterclaim was filed by Respondent WCC on September 29, 1993.

Respondent WCC's Submission Agreement was signed on October 26, 1993.

Respondent WCC's Opposition to Motion to Preclude was filed on October 13, 1993.

Respondent King did not file a Statement of Answer or execute a Submission Agreement.

### **HEARING INFORMATION**

Hearing Dates/Sessions:	June 2, 1994	2 sessions
	June 17, 1994	1 session
	July 8, 1994	2 sessions
	August 12, 1994	2 sessions

Hearing Location:       The Hilton Hotel  
                                  120 Church Street  
                                  Buffalo, NY

### **CASE SUMMARY**

Claimants allege that Respondents breached their fiduciary duty, committed fraud, misrepresentation, and that WCC failed to supervise King.

Claimants state that on May 13, 1991, they bought 30 shares of common stock of a restaurant business from King, a stockbroker, for \$40,000.00. Claimants also allege that King revealed to them that the restaurant made between \$580,000.00 and \$640,000.00 in gross business per year, that there would be a yearly dividend of 12% of \$40,000.00 paid quarterly, rights to the corporate books, and free use of the dining facilities. Claimants contend that, to date, no dividends have been paid and access to the corporate books was denied.

Claimants further allege that on May 16, 1991, King purchased an additional 66.66 shares from another stock owner, John Pearce, for \$30,000.00, used Claimants' money to pay John Pearce and that Claimants' money was not invested in the restaurant. Claimants contend that King was aware that they would not invest in such a risky and dangerous venture, that the terms of investment were false and misleading and that King made the representations for his own benefit and breached his fiduciary duty to his clients.

Claimants maintain that WCC failed to adequately monitor, control, supervise and restrain the activities of its employee, King, in his capacity as investment advisor.

Respondent WCC denies the allegations of wrongdoing, denies liability and

asserts two defenses.

Respondent WCC contends that it had no role in connection with the solicitation of Claimants to purchase shares in the restaurant "Old Pony Post Inn" and that King did not act within the scope of his employment.

WCC also contends that Claimants knew that King was acting solely on his behalf, that he recently purchased the restaurant and that the agreement signed by Claimants and King was on "Old Pony Post Inn" letterhead and not on WCC's letterhead.

WCC also states that it does not handle stock purchases for customers and that its business is limited to sales of investments such as mutual funds and direct participation programs.

#### **RELIEF REQUESTED**

Claimants requested \$40,000.00 for loss of their investment, interest from May 13, 1991 and attorneys' fees and disbursements.

Respondents requested dismissal of statement of claim; attorneys' fees, costs, and disbursements; an award for contribution and/or indemnity against King in full amount of any award issued against WCC in favor of Claimants, together with an award of attorneys' fees, costs and disbursements against King.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearings, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent King is hereby liable to Claimants and shall pay Claimants THIRTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$35,000.00).
2. Respondent WCC is hereby jointly and severally liable and shall pay Claimants SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$17,500.00) of this \$35,000.00.
3. Respondents are also liable and shall pay Claimants interest at a rate of nine percent (9%) from December, 1991 until paid.

4. The claim for punitive damages is denied.
5. The claim for attorneys' fees is denied.
6. All other claims and counterclaims for relief are denied.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and shall be borne equally by the parties.

Non-refundable Filing Fee	\$120.00	
Non-refundable Counterclaim Filing Fee	500.00	
Hearing Session Fees	<u>2800.00</u>	(7 sessions x \$400.00)
TOTAL FEES	\$3420.00	

1. Claimants are assessed a \$120.00 non-refundable Filing Fee. Claimants are further assessed \$1,400.00. Claimants previously paid \$520.00 and owe a balance of \$1,000.00.
2. Respondent WCC is assessed a \$500.00 non-refundable Filing Fee. Respondents WCC and King are jointly and severally assessed \$1,400.00. Respondent WCC previously paid \$1,100.00 and a balance of \$800.00 is owed.

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

Page 5

Case No.: 93-01666

ARBITRATION PANEL

Robert Gleichenhau, Esq.

Public Chairperson

James G. Parker

Public Panelist

Robert G. Spampata, Jr.

Industry Panelist

Concurring Arbitrator's Signature

  
Robert Gleichenhau, Esq.

Executed on:

~~Date of Decision:~~ 10/10/94.

Date of Decision: October 24, 1994

ARBITRATION PANEL

Robert Gleichenhaus, Esq.

Public Chairperson

James G. Parker

Public Panelist

Robert G. Spampata, Jr.

Industry Panelist

Concurring Arbitrator's Signature

  
James G. Parker

Executed on:

~~Date of Decision:~~

10/1/94  
Dated of Decision: October 24, 1994

Page 7

Case No.: 93-01666

ARBITRATION PANEL

Robert Gleichenhaus, Esq.

Public Chairperson

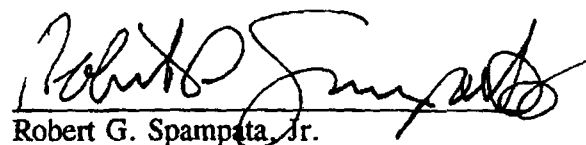
James G. Parker

Public Panelist

Robert G. Spampata, Jr.

Industry Panelist

Concurring Arbitrator's Signature



Robert G. Spampata, Jr.

Executed on:

18 Oct 94

~~Date of Decision:~~

Date of Decision: October 24, 1994

Award #93-01666

STATE OF: *NEW YORK*

SS:

COUNTY OF: *ERIE*

On this *10TH* day of *DECEMBER*, 1994, before me personally appeared **Robert Gleichenhau**, Esq. know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

*Janet M. Urbanczyk*

JANET M. URBANCZYK  
NOTARY PUBLIC, State of New York  
Qualified in *Erie County*  
My Commission Expires *9/30/96*



Award #93-01666

STATE OF: *NEW YORK*

COUNTY OF: *GENESEE*

SS:

On this *11* day of *OCTOBER*, 1994, before me personally appeared **James G. Parker** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

*Maureen Misiti*

**MAUREEN MISITI**  
Notary Public, State of New York  
Qualified in Genesee County  
Reg. No. 01MI4606503  
My Commission Expires May 31, 19*95*

Award #93-01666

STATE OF: *New York*

COUNTY OF: *New York*

SS:

On this *8<sup>th</sup>* day of *October*, 1994, before me personally appeared **Robert G. Spampata, Jr.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

*Phyllis S. Riccardi*

PHYLLIS S. RICCARDI  
Notary Public, State of New York  
No. 01914892459 Qualified in Westchester County  
Certificate Filed in New York County  
Commission Expires June 1, 1995