

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Clark and Lois Bono  
Clark Bono IRA  
Lois Bono IRA  
Clark Bono

93-01724

Name of Respondents

First Albany Corporation  
Ken Tobias

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**REPRESENTATION**

For Claimants Clark and Lois Bono, Clark Bono IRA, Lois Bono IRA and Clark Bono, individually (collectively referred to as "Claimants"): Jeffrey A. Sellers, Esq. of the law firm of Silverberg, Yood, Sellers & McGorry, Buffalo, New York

For Respondents First Albany Corporation ("First Albany") and Ken Tobias ("Tobias"): Michael A. Brady, Esq. of the law firm of Hagerty & Brady, Buffalo, New York

**CASE INFORMATION**

Claimants Statement of Claim filed: April 29, 1993  
Claimants Clark and Lois Bono Submission Agreement signed on: April 26, 1993  
Claimant Clark Bono IRA Submission Agreement signed on: May 25, 1993  
Claimant Lois Bono IRA Submission Agreement signed on: May 25, 1993  
Claimant Clark Bono Submission Agreement signed on: May 25, 1993

Joint Statement of Answer filed by Respondents First Albany and Tobias (jointly referred to as "Respondents") on: September 8, 1993  
First Albany's Submission Agreement signed on: September 27, 1993  
Tobias' Submission Agreement signed on: October 4, 1993

**HEARING INFORMATION**

Hearing Dates/Sessions: May 5, 1994 - two sessions  
May 6, 1994 - two sessions

Hearing Location: Hyatt Regency, Buffalo, New York

**CASE SUMMARY**

Claimants alleged, among other things, that Claimant Clark Bono ("Bono") had determined that due to his lack of knowledge and sophistication he needed help in investing Claimants funds. Claimants alleged that Bono through an intermediary was introduced to Tobias. Claimants alleged that Tobias assured Bono that he could help Claimants meet their investment objectives. Claimants alleged that they relied on the representations of Tobias as to his ability to accomplish Claimants' investment objectives. Claimants opened a joint account for Lois and Clark Bono, an individual account for Clark Bono, an I.R.A. for Lois Bono and an I.R.A. account for Clark Bono. Claimants alleged that Tobias made material misrepresentations to Bono to induce Claimants to trade with Respondents. Claimants alleged that Tobias assured Claimants that the pattern and level of trading in Claimants accounts were appropriate. Claimants alleged that Respondents misrepresented to Bono the value of various accounts and the losses incurred. Claimants alleged that Respondents engaged in a pattern of excessive trading that was meant to benefit Respondents not the Claimants. Claimants alleged that the investments recommended were unsuitable given their investment needs and objectives. Claimants alleged that Respondents made unauthorized trades; that they were negligent in the handling of Claimants' accounts; that Respondents failed to follow Claimants stated investment objectives; and, First Albany failed to properly supervise Tobias or Claimants' accounts. Claimants alleged the following wrongful acts: breach of contract, violation of federal and state securities laws, and violations of the rules of the National Association of Securities Dealers, Inc. ("NASD") as well as other exchanges. Claimant alleged that First Albany is responsible for the actions of Tobias under the doctrine of Respondeat Superior.

Respondents denied each and every allegations of wrongdoing and specifically maintained, among other things, that all investments were suitable for Claimants given their investment needs and objectives. Respondents maintained that Bono, a successful businessman was seeking an aggressive investment strategy, that Bono was in constant contact with Tobias and that Bono approved all trades. Respondents maintained that Bono exerted control over the accounts. Respondents maintained that Tobias warned Bono about specific investments, his manner of

investing and the speculative nature of certain investments. Respondents maintained notwithstanding these warnings, Bono determined to invest in the manner he chose. Respondents maintained that much of the losses incurred were in investments Bono made with a predecessor firm, Norstar, which were transferred by Claimants to First Albany. Respondents maintained that Claimants never complained to Respondents and that Respondents first learned of Claimants' dissatisfaction was when the Claim was filed. Respondents maintained that Claimants are attempting to shift the blame for Bono's investment decision to them.

### **RELIEF REQUESTED**

Claimants requested: compensatory damages on the joint account in the amount of \$45,077; compensatory damages on Clark Bono individual account in the amount of \$41,286; compensatory damages on Clark Bono IRA account in the amount of \$11,465; and compensatory damages in Lois Bono IRA account in the amount of \$25,329. Claimants also requested treble damages in the amount of \$369,471, plus interest on their investments and costs of these proceedings.

Respondents requested: that Claimants' Statement of Claim be denied in its entirety and that Respondents be awarded costs and expenses including attorneys' fees.

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

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 originals remain on file with the NASD.

### **AWARD**

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

1. The arbitrators found for the Respondents in the claims of Clark and Lois Bono, Clark Bono and Clark Bono IRA, however, in the claim of Lois Bono IRA, the decision of the arbitrators was for the Respondents 2 to 1, with Chairperson Buch dissenting.

2. All claims for treble damages are denied in their entirety.
3. The parties shall bear their costs and expenses, including attorneys' fees, except as specifically addressed herein.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$750 = \$3,000

Forum Fees Assessed Against: Claimants and Respondents equally so that Claimants are jointly and severally assessed forum fees in the amount of \$1,500 and Respondents First Albany and Tobias are assessed forum fees in the amount of \$1,500.


Claimants, however, are entitled to offset this \$1,500 forum fees with their \$750 hearing session previously deposited and with their \$750 postponement fee which was to be refunded. Therefore, no more fees are due from the Claimants.

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

Concurring Arbitrator's Signature

Name

Public/Industry

  
David Buch, Esq.



Chairman Buch dissents only to the claim of Claimant Lois Bono IRA being denied. Chairman Buch concurs with all other aspects of this award.

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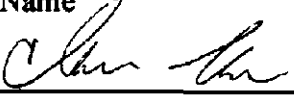
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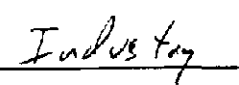
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Concurring Arbitrator's Signature

Name

Public/Industry

 6/13/94  
Charles B. Border

  
Industry

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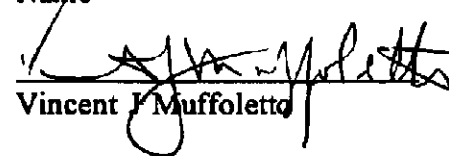
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Name

Public/~~Industry~~

  
Vincent J. Muffoletto



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