

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James C & Joan L Spillman TTEES

93-02315

Name of Respondent

Gerald Klein

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 11, 1993, Claimants James & Joan Spillman, who appeared Pro Se, alleged that Respondent Gerald Klein, through the firm of KMNY Radio Discount brokers changed investment philosophies on their account without their consent or approval, and that he failed to place stop orders on Euro Disney and Filenet stock that they purchased through the Respondent. The Claimants contended that the Respondent also made unauthorized purchases and sales of Wells Fargo and the Gap stock, against their instructions, and that due to the wrongdoing of the Respondent, they have suffered damages for which the Respondent should be held liable.

Respondent Gerald Klein, who appeared Pro Se, maintained that he never acted improperly nor did he fail in his fiduciary responsibility to his clients. The Respondent further maintained that the Claimants kept a close watch on their account and monitored their account balance daily. Respondent Klein further maintained that upon his review of the account, he found that the account showed a profit, which was equivalent to an 18.1% return of investment for the Claimants, and that therefore, the claims of the Claimant are invalid and should be dismissed.

In a reply to the Answer of Respondent Gerald Klein, the Claimants refuted the defenses of the Respondent and restated that the Respondent failed to place stop loss orders into effect after telling them he would, and further that he breached his fiduciary responsibility to them. The Claimants amended their original claim to include a loss on Federal Paper Board, another security where the Claimants alleged that the Respondent failed to place a stop loss order, and contended that he should be held liable in this matter.

RELIEF REQUESTED

Claimant James & Joan Spillman requested \$75.00 in actual damages.

Respondent Gerald Klein requested that the claims of the Claimant be dismissed.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph J. Aron, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on July 20, 1993 and by the Respondent on September 14, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants James & Joan Spillman against Respondent Gerald Klein are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, JOSEPH J. ARON, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: February 24, 1994