

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joel and Julie Yohay

93-02378

Name of Respondent

Waxman Securities, Inc.

REPRESENTATION

For Claimants Joel and Julie Yohay ("Claimants"): Mark F. Heinze, Esq. of the law firm of Monaghan, Rem & Zeller, P.C. located in Hackensack, New Jersey.

For Respondent Waxman Securities, Inc. ("Respondent"): Thomas J. McCabe, Esq. of the law firm of Thomas J. McCabe located in New York City, New York.

CASE INFORMATION

Statement of Claim filed: July 13, 1993.

Claimants' Submission Agreement signed on: September 22, 1992.

Statement of Answer filed by Respondent on: September 13, 1993.

Respondent's Submission Agreement signed on: September 24, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:	March 30, 1994	-	Two Sessions
	April 21, 1994	-	One Session

Hearing Location: National Association of Securities Dealers, Inc. offices located in New York City, New York.

CASE SUMMARY

Claimants alleged that on or about May 15, 1990, a representative of the

Respondent met with Joel H. Yohay, and certain of Mr. Yohay's colleagues; that Claimants informed Respondent that they were conservative investors and willing to incur a minimal amount of risk; that Respondent's representative stated, but did not guarantee, that he could provide a modest return in the range of fifteen percent on the proposed investment; that Respondent's representative made representations with regard to a "system" that he used to track securities which would allow him to detect signals of a down market; and that this system guaranteed against dramatic losses. Claimants further alleged that the downside protection offered by Respondent was the sole reason and one of the conditions that Claimants relied upon when they made the decision to invest through respondent; that claimants had a specific discussion with Respondent's representative, in which it was agreed that Respondent would not permit losses in excess of \$10,000; that Claimants initially invested \$50,000, which increased to \$55,000; and that the Claimants suffered a loss of \$18,297.55 by the late summer of 1990.

Claimants further alleged that they contacted Respondent seeking an explanation for the dramatic decline in their account in light of Respondent's statements with regard to the downside protection of his system; that Respondent told claimants that he expected the market to rebound; that Respondent admitted that his system had not generated the "sell" signal prior to the market's substantial decline; and that Claimants liquidated their account after the market did not rebound after a couple of days as Respondent anticipated.

Further, Claimants alleged that their loss was attributable to the failure of Respondent's system to generate a sell signal prior to the market's substantial decline and that Claimants would not have invested with Respondent in the first place if Respondent had not fraudulently induced Claimants to invest with his firm by representing that his system was viable and could protect against losses.

Respondent denied responsibility for the Claimants' loss set forth in the statement of claim and denied all allegations of wrongdoing alleged by Claimants. Respondent maintained that he did not make representations about a "system" he used to track securities, although he did advise Claimants that he conducted independent market analysis. Respondent also maintained that he did not guarantee against losses or that he had expertise in predicting dramatic market movements; and that he did not make representations regarding downside protection upon which Claimants could have reasonably relied.

Respondent also maintained that Claimants' account sustained losses because the stock market sharply declined when Iraq invaded Kuwait in August of 1990; that Respondent did not make misrepresentations of any kind to Claimants; that Respondent repeatedly urged Claimants not to sell their depressed positions as he believed that the market would rebound; and that if Claimants had followed Respondent's recommendations, their initial investment would have more than doubled in value. Respondent also maintained that Claimants' allegations of fraud

are barred by the applicable statutes of limitations.

Respondent further maintained that Claimants' claims are barred by the defenses of laches, waiver, estoppel, ratification, and the appropriate statute of limitations; that events beyond the control of Respondent were the sole and proximate cause of Claimants' losses; that Claimants' Statement of Claim fails to state a claim upon which relief may be granted; and that Claimants assumed the risk of any losses they may have suffered.

Respondent further counterclaimed alleging that Claimants refused to withdraw the complaint that they filed in Supreme Court, State of New York, County of Nassau, on May 1, 1991; that Respondent's attorney served upon Claimants a letter demanding that they submit to arbitration in accordance with the arbitration agreements executed by the Claimants; that the Court ruled that the arbitration agreements were not ambiguous and required the parties to arbitrate; and that as a result of the Claimant's action in state court, Respondent incurred unnecessary legal fees.

Claimants maintained that their state court action was filed in good faith notwithstanding the arbitration clauses between the parties; that Respondent's claim for attorneys fees is barred by its Election of Remedies in Supreme Court; that the arbitration panel lacked subject matter and personal jurisdiction in Respondent's counterclaim; that Respondent's claim for attorneys fees was waived by virtue of its failure to make proper application for fees to the Supreme Court; that Respondent's counterclaim is barred by res judicata; that Respondent's claim for attorneys fees is not provided for in C.P.L.R. 7501 et seq., that the fees sought are unreasonable and are solely the consequence of Respondent's own wrongdoing; and that Respondent's claim for attorneys fees is time-barred by virtue of its failure to appeal or otherwise move to include such a claim in the Supreme Court's Order staying the Supreme Court action pending arbitration.

RELIEF REQUESTED

Claimants requested an award against the Respondent for the following:

1. The sum of \$18,297.55;
2. Pre-Judgment interest on the compensatory damages award, calculated at the rate of 10% from October 1, 1990;
3. Punitive damages in an amount which, when added to the award of compensatory damages, results in a combined award of compensatory and punitive damages which does not exceed \$30,000;
4. Attorneys fees calculated at one-third of the award of compensatory damages, pre-award interest and punitive damages;

5. Costs of the suit, including the filing fee of \$500;
6. Post-award interest at the rate of ten percent, until the date of payment; and
7. Such other relief as the panel of arbitrators deems equitable and just under the circumstances.

Respondent requested that the arbitration panel find in Respondent's favor as follows:

1. Claimants' claim should be dismissed in its entirety;
2. The costs and attorneys fees of this proceeding;
3. An award on Respondent's counterclaim equal to the attorneys' fees and costs incurred in connection with the state action; and
4. Such other relief as the arbitration panel deems just and proper.

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 hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claim be and hereby is denied in its entirety.
2. Respondent's counter claim be and hereby is denied in its entirety.
3. Each party shall bear their own costs, including attorneys' fees.

FORUM FEES

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

3 sessions X \$400 = \$1,200 minus hearing session deposit of \$400 = net \$800 due.

Forum fees Assessed Against:

1. Claimants Joel and Julie Yohay be and hereby are liable and shall pay to the NASD the sum of \$400.00 representing one-half of the outstanding fees.
2. Respondent Waxman Securities, Inc. be and hereby is liable and shall pay to the NASD the sum of \$400.00 representing one-half of the outstanding forum fees.

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

Concurring Arbitrators' Signatures

Name



Robert Pincus, Esq.

Chairperson - Public Arbitrator

John J. O'Neill, Esq.

Industry Arbitrator

Edward M. Miller, Ph.D

Public Arbitrator

Date of Decision: June 29, 1994

[Handwritten Signature]

3 sessions X \$400 = \$1,200 minus hearing session deposit of \$400 = net \$800 due.

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

Concurring Arbitrators' Signatures
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Robert Pincus, Esq.
Chairperson - Public Arbitrator

John J. O'Neill, Esq.
Industry Arbitrator

[Handwritten Signature: Edward M. Miller]

Edward M. Miller, Ph.D.
Public Arbitrator

Date of Decision: June 29, 1994

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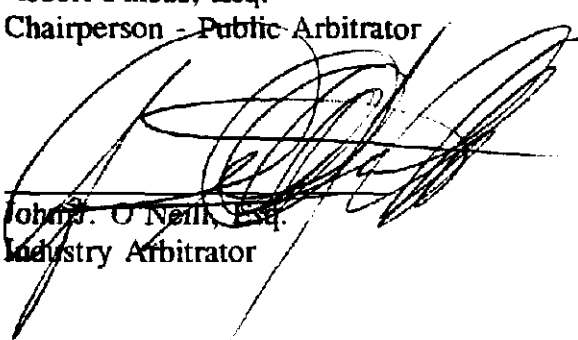
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Chairperson - Public Arbitrator



John J. O'Neill, Esq.
Industry Arbitrator

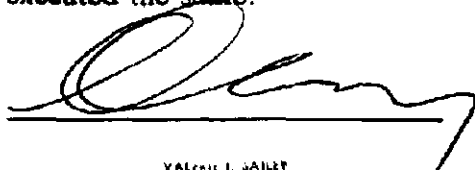
Edward M. Miller, Ph.D
Public Arbitrator

Date of Decision: June 29, 1994

STATE OF

COUNTY OF

On this 11 day of July, 1994, before me personally appeared
John T. O'Neill 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.



VALERIE I. BAILEY
NOTARY PUBLIC, State of New York
No. 24-4940303
Qualified in Kings County
Commission Expires July 18, 1994

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STATE OF

COUNTY OF

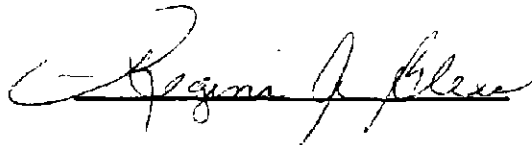
On this 27 day of June, 1994, before me personally appeared
Robert Pincus known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

Carole K Roth

CAROLE K. ROTH
Notary Public, State of New York
No. 60-4999402
Qualified in Westchester County
Commission Expires July 20, 1996

STATE OF *New Jersey*
COUNTY OF *Monmouth*

On this 16 day of June, 1994, before me personally appeared
Edward Miller 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.

A handwritten signature in cursive script, reading "Regina A. Bless", written over a horizontal line.

REGINA A. BLESS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Sept. 10, 1997