

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

James F. Ash

93-02580

Name of Respondent(s)

James Shine
F.S.G. Financial Services Group, Inc.

REPRESENTATION

For Claimant: Kenneth Rosenthal, Esq. of Brenner, Saltzman, Wallman & Goldman of New Haven, Connecticut.

For Respondent F.S.G. Financial Services Group, Inc. ("F.S.G."): Bert Vladimir, Esq. of N. Babylon, NY.

For Respondent James Shine ("Shine"): Shine appeared pro se.

CASE INFORMATION

Statement of Claim filed: June 30, 1993.

Claimant's Submission Agreement signed on: June 22, 1993.

Amended Statement of Claim filed on March 31, 1994.

Statement of Answer filed by Respondent F.S.G. Financial Services Group, Inc.
on: August 31, 1993.

Respondent F.S.G. Financial Services Group, Inc.'s Submission Agreement
signed on: August 31, 1993.

Statement of Answer filed by Respondent James Shine on: September 2, 1993.

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Respondent James Shine's Submission Agreement signed on: August 30, 1993.

Response to Claimant's Amended Statement of Claim filed by Respondent James Shine on: May 13, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: August 11, 1994 / Two Sessions / Three Arbitrators
August 24, 1994 / Two sessions / Three Arbitrators

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

CASE SUMMARY

Claimant alleged that on August 20, 1991 he instructed his broker, Respondent Shine, to sell Claimant's shares in Magnum Resources, a penny stock listed in the pink sheets. Claimant next alleged that, after Claimant delivered the stock certificate to Shine, that Shine sold for Claimant 5,000 shares of Magnum Resources for \$2970. Claimant further alleged that during the week following the sale, Shine telephoned Claimant and informed him that there had been a reverse 20 to 1 split in Magnum Resources, prior to the sale, and, as a result, Claimant was short 4,750 shares of Magnum Resources. Claimant alleged that on September 6, 1991, Respondent F.S.G. bought the 4,750 shares for Claimant's account and that the transaction cost Claimant \$3607.50. Claimant next alleged that from August 1990 to September 1992 Claimant purchased 35,000 shares of Grubb and Ellis Co. Claimant then alleged that on February 1, 1993 he telephoned Shine to ask if Shine knew why Claimant's Grubb and Ellis Co. stock had gone up in price. Claimant alleged that after Shine ascertained the price of Grubb and Ellis Co. that Shine informed Claimant that he was a "wealthy man" and that Claimant then instructed Shine to sell 10,000 shares of Grubb and Ellis Co. stock. Claimant then alleged that, subsequent to the sale, he learned that Grubb and Ellis Co. had undergone a reverse stock split and that Claimant actually owned only 7,000 shares of Grubb and Ellis Co. stock at the time of the sale and, as result, Claimant was short 3,000 shares of Grubb and Ellis Co. Claimant alleged that after he had unsuccessfully attempted to cancel the transaction, 2,916 shares of Grubb and Ellis Co. were bought into Claimant's account to cover the short position without Claimant's approval, at a cost to Claimant of \$15,718.50.

Respondent, F.S.G. maintained that Respondents breached no duty owed to

Claimant, that Respondents properly maintained Claimant's accounts, and Claimant, himself, was responsible for any losses incurred. Respondent maintained that after Shine had been asked by Claimant to investigate the reason for the rise in price in Grubb and Ellis Co. on February 2, 1993, that Shine contacted Robert Stelz, a principal at F.S.G., and had him investigate. Respondent maintained that Stelz contacted the news service to which F.S.G. subscribed and found no mention of a reverse split of Grubb and Ellis Co. Respondents further maintained that Stelz also checked for news about Grubb and Ellis Co. on the "MDSI screen", a service provided by F.S.G.'s clearing corporation, U.S. Clearing Corp. which is updated by ADP. Respondent maintained that the MDSI screen also had no indication of a reverse stock split for Grubb and Ellis Co. Respondent F.S.G. further maintained that Shine had been told by Claimant not to cover the trade at a higher price. Respondent F.S.G. further maintained that it was at this time that F.S.G. first became aware of Claimant's earlier transaction involving Magnum Resources. Respondent F.S.G. also maintained that any errors in Claimant's account were the result of U.S. Clearing Corp. and ADP's omissions but that neither U.S. Clearing Corp. nor ADP would accept responsibility for the omission. Respondent F.S.G. further maintained that U.S. Clearing Corp. maintained that Claimant was made aware of the pending reverse split through communications sent to Claimant from U.S. Clearing Corp. Respondent F.S.G. also maintained that Claimant was never told that the transaction should have been canceled but rather was told that F.S.G. would attempt to get ADP to assume responsibility for the transaction since ADP failed to properly update U.S. Clearing Corp.'s system about the reverse stock split. Respondent F.S.G. further maintained that they serviced Claimant's unsolicited transaction to the best of their abilities as evidenced by Respondent's attempts to get U.S. Clearing Corp. to accept responsibility and, therefore, Claimant must bear the loss.

Respondent, James Shine, maintained that, with regard to the Magnum Resource trade, that he had executed Claimant's unsolicited order to sell 5,000 shares of Magnum Resources and at the time neither he nor Claimant were aware that a 20 to 1 reverse stock split in Magnum Resources had occurred. Respondent Shine further maintained that once the discrepancy due to the reverse split was realized, Claimant accepted responsibility and continued to use Respondent as his broker. Respondent further maintained that Claimant's alleged damages of \$3,607.50 resulting from the sale of Magnum Resources is incorrect because Claimant failed to deduct the \$2,970 proceeds check received from U.S. Clearing Corp. In regards to Grubb and Ellis Co., Respondent, James Shine, maintained that on February 1, 1993 Claimant telephoned Shine and requested a quote on Grubb and Ellis Co. and then after Shine informed Claimant of the price, that Claimant, and not Shine, said that Claimant was a wealthy man. Respondent Shine further maintained that he asked Claimant whether he knew why the stock had gone up

in price and that Claimant informed Shine that he did not know why the price had gone up and that Claimant asked Shine to look into it. Respondent Shine next maintained that he telephoned Robert Stelz at F.S.G.'s home office and requested that Mr. Stelz investigate Grubb and Ellis Co. on the stock news hotline. Respondent maintained that Mr. Stelz informed him that the only news on Grubb and Ellis Co. was that the company's reorganization plan had been approved and there was no mention of a reverse split. Respondent maintained that when Claimant's account was checked using the screen furnished by U.S. Clearing Corp. it showed 35,000 shares of Grubb and Ellis Co. in Claimant's account. Respondent further maintained that Respondents never promised to cancel the trade and that they made attempts to cancel the trade. Respondent maintained that once attempts to cancel the trade were unsuccessful Claimant accepted responsibility and that Claimant instructed Respondent to cover the 2,916 share deficit. Respondent, James Shine, further maintained that Claimant was negligent because Claimant knew Respondent was a discount broker and, therefore, Claimant should have taken more responsibility for his investments.

RELIEF REQUESTED

Claimant requested: damages of \$30,000, which is inclusive of compensatory and punitive damages, from F.S.G. Financial Services Group, Inc. and James Shine. Claimant in an Amended Statement of Claim requested damages of \$60,000 from Respondents.

Respondent F.S.G. requested: Claimant's claims be dismissed.

Respondent Shine requested: Claimant's claims be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Claimant originally filed the Statement of Claim requesting damages of \$30,000 from Respondents for which one arbitrator was assigned. Claimant then submitted an Amended Statement of Claim requesting damages of \$60,000 from Respondents. The Amended Statement was granted and two additional arbitrators were assigned to serve on the panel pursuant to the NASD's rules governing arbitration.

After completion of the first day of hearings Claimant appeared for the second day of hearings without counsel and informed the panel that he had decided to discontinue representation by his attorney and to proceed pro se.

Respondents moved to dismiss Claimant's Statement of Claim during the hearing after Claimant admitted to the arbitration panel that one of the exhibits submitted with Claimant's statement of claim, a letter dated March 31, 1993 to Claimant from Kathy J. Abate with U.S. Clearing Corp.'s Compliance Department, had been modified by the Claimant. The panel considered both the original letter, supplied by Respondents and verified by Ms. Abate who appeared at the hearing, and Claimant's version of the letter and denied the Motion to Dismiss.

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 the issues submitted for determination as follows:

1. Respondent, F.S.G. Financial Services Group, Inc., be and hereby is liable to Claimant in the amount of \$8,776.
2. Respondent, F.S.G. Financial Services Group, Inc., shall bear the forum fees. Respondent F.S.G. Financial Services Group, Inc. shall pay to Claimant the sum of \$550 which represents a reimbursement for the hearing session deposit paid by Claimant.
3. Claimant's claims for relief as against Respondent Shine are denied.
4. Each party shall bear his own attorneys' fees.

FORUM FEES

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

4 sessions X \$400 = \$1,600 minus hearing session deposit of \$550 = net \$1,050 due.

Forum fees Assessed Against:

1. Respondent F.S.G. is assessed \$1,050 which represents the balance of the total forum fees due. Respondent F.S.G. be and hereby is liable and shall pay to the NASD the sum of \$1,050.

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

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Concurring Arbitrators' Signatures

Name

Public Chairperson

Diane Getzler, Esq.
Diane Getzler, Esq.

Name

Industry Panelist

Robina Fedora Asti

Name

Public Panelist

Melvin Lyon

Date of Decision: OCTOBER 14, 1994

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STATE OF: *Connecticut*

ss: *Stanford*

COUNTY OF: *Fairfield*

On this *10th* day of *October*, 1994, before me personally appeared **Diane Getzler, Esq.** 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.

Nancy Carlucci

NANCY CARLUCCI
NOTARY PUBLIC (My Comm. Exp. 1/31/96)

STATE OF:

ss:

COUNTY OF:

On this day of , 1994, before me personally appeared **Robina Fedora Asti** 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.

STATE OF:

ss:

COUNTY OF:

On this day of , 1994, before me personally appeared **Melvin Lyon** 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.

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NASD Award #93-02580

Concurring Arbitrators' Signatures

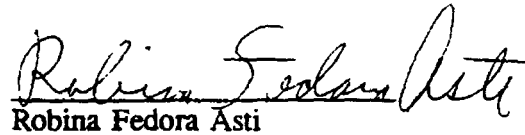
Name

Public Chairperson

Diane Getzler, Esq.

Name

Industry Panelist



Robina Fedora Asti

Name

Public Panelist

Melvin Lyon

Date of Decision: October 14, 1994

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Diane Getzler, 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.

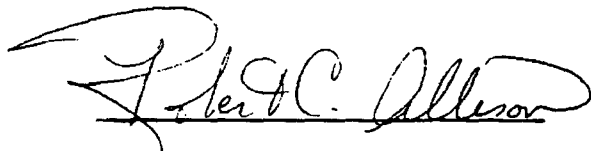
STATE OF: *New York*

SS:

COUNTY OF: *New York*

On this *12* day of *October* , 1994, before me personally appeared **Robina Fedora Asti** 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.

ROBERT C. ALLISON
NOTARY PUBLIC, State of New York
No. 01ALE030212
Qualified in Queens County *96*
Commission Expires July 11, 19



STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Melvin Lyon** 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.

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NASD Award #93-02580

Concurring Arbitrators' Signatures

Name

Public Chairperson

Diane Getzler, Esq.

Name

Industry Panelist

Robina Fedora Asti

Name

Public Panelist

Melvin Lyon
Melvin Lyon

Date of Decision: october 14, 1994

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Diane Getzler, Esq.** 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.

STATE OF:

SS:

COUNTY OF:

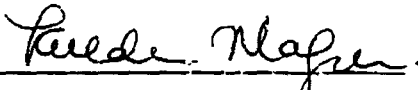
On this day of , 1994, before me personally appeared **Robina Fedora Asti** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: *New Jersey*

SS:

COUNTY OF: *Passaic*

On this *11th* day of *October* , 1994, before me personally appeared **Melvin Lyon** 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.



HILDA MAGAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires August 30, 1998