

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Eleanor I. and Donald E. Jackson

93-02860

Name of Respondent(s)

Peter Theodorellis

REPRESENTATION

For Claimant: The Claimants, Donald E. Jackson and Eleanor I. Jackson, appeared pro se.

For Respondent: Diana Armenakis, Esq. of Armenakis & Armenakis, New York, NY.

CASE INFORMATION

Statement of Claim filed: July 20, 1993

Claimant's Submission Agreement signed on: August 19, 1993

Statement of Answer filed by Respondent, Peter Theodorellis on: November 30, 1993. Amended Answer filed December 1, 1993.

Respondent, Peter Theodorellis' Submission Agreement signed on: November 30, 1993.

CASE SUMMARY

Claimants alleged that on July 31, 1992 Respondent Peter Theodorellis ("Respondent") phoned Eleanor Jackson and recommended she purchase 1,000 shares of Daxor Corp. on margin and that Eleanor Jackson agreed. Claimants further alleged that subsequently, from July, 31 1992 to August 3, 1992, Respondent repeatedly bought and sold shares of Daxor Corp on margin without

the claimants authorization; which resulted in a \$37,574.94 loss.

Claimants alleged that losses from the Daxor Corp. stock resulted in margin call liquidations of related stock resulting in additional losses of \$47,405.78.

Claimants next alleged that on June 5, 1992 Respondent recommended, and Claimants purchased, Americus Trust without fully disclosing material information concerning the purchase. Claimants further alleged that between June 5, 1992 and June 23, 1992, respondent placed unauthorized trades in Americus Trust for Arco Series without disclosing the risks to the claimant and that these trades resulted in a loss of \$3465.67.

Claimants further alleged that from February 27, 1992 to March 3, 1992, respondent bought and sold unauthorized quantities of Banc Texas which resulted in a \$5891.69 loss. Claimants alleged that Respondent churned their account and that the short term purchases and timing of the buys and sells was done in an imprudent manner.

Claimants further alleged that between April 2, 1992 and April 7, 1992, respondent made unauthorized, rapid, and imprudent trades in Immunex which resulted in a loss of \$2292.49.

In summary, Claimant alleged churning, same day trades which were unsuitable for Claimants investment objectives, and unauthorized trades and claims 60,069 in damages.

Respondent maintained that all purchases and sales in Claimants' account were made with the knowledge, authorization and acquiescence of Eleanor Jackson who had full authority to trade in the joint account. Respondent maintained that as of August 11, 1992 Respondent ceased handling the Claimants' account and, therefore, could not be held responsible for any activity in Claimants account after that date.

Respondent next maintained that Respondent telephoned Donald Jackson and apprised Donald Jackson of the short term purchases and sales of risky securities by Eleanor Jackson in Claimants' account and that Donald Jackson replied, "If it keeps her occupied, then it's fine with me." Respondent further maintained that Eleanor Jackson was a sophisticated and active trader.

Respondent maintained that on August 12, 1992, Claimants executed a settlement agreement whereby in consideration of \$15,809 the claimants agreed to waive any and all claims relating to the trading activity in this account prior to this date and Claimants received and negotiated a check for \$15,809.

Respondent asserted the following affirmative defenses: that Claimants failed to

state a cause of action upon which relief could be granted; that Claimants received payment in the amount of \$15,809 from K. Aufhauser & Company, Inc., Respondent's employer, as and for a full settlement of Claimants' claims against K. Aufhauser & Company, Inc. and Respondent; that Claimants waived all claims, demands and or causes of action against Respondent by virtue of Claimants' receipt of \$15,809 paid to them by K. Aufhauser & Company, Inc. and the releases executed by both Claimants on August 12, 1992 and were thereby estopped from bringing this claim.

RELIEF REQUESTED

Claimants requested: \$60,069 in damages, an amount that is less than the total of the following specified claims: Daxor trades - \$37,574.94, losses from margin calls that were a direct result of the Daxor losses - \$47,405.78, Americus Trust for Arco - \$3465.67, Banc Texas - \$5891.69, Immunex - \$2292.49, Quarterdeck - \$3224.50, Royce Labs - \$4973, and Unisys Preferred A - \$1670.41.

Respondent requested: a dismissal of claims and such other and further relief as is deemed just.

OTHER ISSUES CONSIDERED & DECIDED

On May 3, 1994, Respondent filed a motion to dismiss the complaint prior to the hearing date on June 14, 1994. The motion was based on a waiver of claims signed by the claimants on August 12, 1992. The Claimants objected to the motion on the grounds that they were not fully aware of the extent of the losses at the time they executed the agreement.

Respondent's motion to dismiss has been granted. The reason is that the claimants are barred from recovery, as a matter of law, under the legal principles of (1) release and/or (2) accord and satisfaction.

The NASD shall retain the filing fee and the hearing session deposit previously paid by the Claimants.

Concurring Arbitrators' Signatures

Name

Public Chairperson

Sheldon M. Finkelstein
Sheldon M. Finkelstein, Esq.

Name

Industry Panelist

Frank G. Piazza

Name

Public Panelist

George R. Freund

Date of Decision: July 15, 1994

Award #93-02860

STATE OF: *NEW JERSEY*

SS:

COUNTY OF: *ESSEX*

On this *11th* day of *JULY*, 1994, before me personally appeared **Sheldon M. Finkelstein, 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.

Karen P. Reilly

KAREN P REILLY
A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Sept. 12, 1994

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Frank G. Piazza** 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 **George R. Freund** 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.

Concurring Arbitrators' Signatures

Name

Public Chairperson

Sheldon M. Finkelstein, Esq.

Name

Public Panelist

Frank G. Piazza

Name

Industry Panelist



George R. Freund

Date of Decision: July 15, 1994

Award #93-02860

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Sheldon M. Finkelstein, 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:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Frank G. Piazza** 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: *Union*

On this *27th* day of *June* , 1994, before me personally appeared **George R. Freund** 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.

Diana M. Pallante

DIANA M. PALLANTE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 17, 1999

Concurring Arbitrators' Signatures

Name

Public Chairperson

Sheldon M. Finkelstein, Esq.

Name

Frank G. Piazza
Frank G. Piazza

Name

George R. Freund

Industry (72)
~~Public~~ Panelist

Public (72)
~~Industry~~ Panelist

Date of Decision: July 15, 1994

Award #93-02860

STATE OF:

SS:

COUNTY OF:

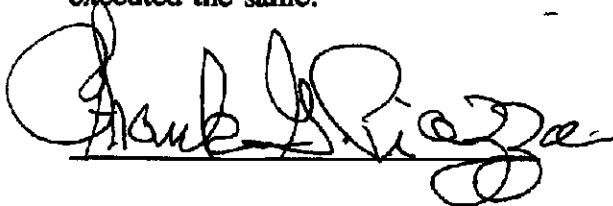
On this day of , 1994, before me personally appeared **Sheldon M. Finkelstein, Esq.** know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this 30 day of June, 1994, before me personally appeared **Frank G. Piazza** 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.

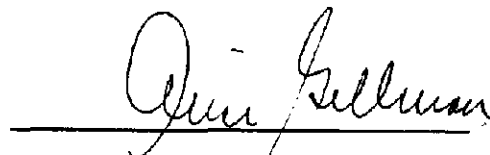


STATE OF: New Jersey

SS:

COUNTY OF: Bergen

On this / day of 30, June, 1994, before me personally appeared **George R. Freund** 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.



ALICE GILLMORE
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JULY 31, 1997