

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Dr. Carl Pagano, TTEE/PSRP

vs.

NASD Case No.
93-03101

Name of Respondents

Melbourne GSI Corp.
Joel Heusler

REPRESENTATION

For Claimant, Dr. Carl Pagano, TTEE ("Claimant"), George Marlin, non-attorney representative.

For Respondent, Melbourne GSI Corp. ("Melbourne"), George Clair from Melbourne GSI Corp. located in New York, New York.

For Respondent, Joel Heusler, ("Heusler"), Robert E. Harlow, Esq. located in Mineola, New York.

CASE INFORMATION

Statement of Claim filed on August 6, 1993.

Claimant's Submission Agreement signed on August 21, 1993.

No Statement of Answer or Submission Agreement was filed by Respondent Melbourne GSI Corp.

Statement of Answer filed by Respondent Joel Heusler on September 26, 1994.
Respondent Heusler's Submission Agreement was signed on September 28, 1994.

HEARING INFORMATION

Hearing Date/Session: September 28, 1994 - 2 Sessions

Hearing Location: NASD Offices, 33 Whitehall Street, New York, NY

CASE SUMMARY

Claimant alleges that Heusler constantly churned Claimant's account, wantonly risked the account, ignored his conservative investment directions and violated his responsibilities as a broker.

Claimant explains that he initially invested approximately \$60,000.00 with Respondent Joel Heusler. Claimant states that he believes Respondent Heusler worked for Tucker Anthony of which Melbourne GSI, Corp. was a "sub-division". Despite requests to diversify his portfolio, Claimant maintains that Heusler invested solely in speculative stocks. Additionally, Claimant states he never received any phone calls when Heusler bought or sold stock for Claimant's account.

Claimant states he began to worry about the excessive trading in his account and that he had quickly lost about 50% of his investment. Claimant further states he asked Respondent to stop trading in the account, to no avail. Claimant alleges he asked Tucker Anthony's compliance officer to freeze the account and that, furthermore, at no time was Claimant aware that Tucker Anthony and Melbourne GSI were different companies.

Respondent Heusler submitted a letter that he wrote to a Mr. John Herbst, an NASD Compliance Examiner, as his answer. In it, Heusler alleges that Claimant is an intelligent man who understood the risks of investing and was aware of the activities in his account at all times. Respondent maintains he routinely discussed trades over the phone with Claimant and never guaranteed results. Additionally, Respondent states Claimant never questioned the transactions with one exception.

Respondent states Claimant assumed the risks inherent in the investment strategies taken with the account.

RELIEF REQUESTED

Claimant requests lost principal (\$27,611.00), lost commissions (\$34,302.72), processing fees (\$870.00), and treble damages (\$82,883.00).

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copies of the Award while the original remains on file with the NASD. After reviewing hearing notices sent to the parties, the panel found that Melbourne was duly notified of the proceedings and failed to appear. Pursuant to Section 29 of the *Code of Arbitration Procedure* ("Code"), the panel proceeded with the hearing in its absence.

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 Respondents, Joel Heusler and Melbourne GSI Corp. are jointly and severally liable and shall pay to Claimant **THIRTY FIVE THOUSAND DOLLARS (\$35,000.00)**.
2. All Forum Fees and costs are jointly and severally assessed against Respondents.

FORUM FEES

Pursuant to Section 43(c) of the *Code*, the following Forum Fees are assessed:

Non-refundable filing fee	\$ 200.00
Hearing sessions fee (2 x \$750.00)	<u>1,500.00</u>
Total Fees	\$1,700.00

1. Claimant paid \$950.00 and is entitled to a refund of \$950.00.
2. Respondents paid nothing and owe \$1,700.00. Respondents shall satisfy the fees assessed by reimbursing Claimant \$950.00 and by remitting the balance of \$750.00 to the NASD.

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

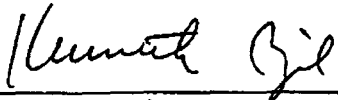
ARBITRATION PANEL

James P. O'Neill, Esq. - Public Chairperson

Edward G. Toptani, Esq. - Public Panelist

Kenneth S. Bigel - Industry Panelist

Concurring Arbitrator's Signature



Kenneth S. Bigel

Industry Panelist

NASD Date of Decision: December 12, 1994

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STATE OF: *new york*

COUNTY OF: *Manhattan*

SS:

On this *27* day of *october*, 1994, before me personally appeared **Kenneth S. Bigel** 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.

Janelle H. Scarborough

JANELLE H. SCARBROUGH
Notary Public, State of New York
No. 41-4979472
Qualified in Queens County
Commission Expires March 25, 1995