

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Zhuang Li Cai & Chung Shui Man

Name of Respondents

Chatfield Dean & Co., Inc.  
Frank L. Laudano  
Raymond John Acciardo, Sr.  
Alan Dillan

93-03158

Name of Third Party Respondents

John Harth  
David Gurievsky  
Cheryl Bauman

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**REPRESENTATION**

For Claimants Zhuang Li Cai and Chung Shui Man ("Claimants") appeared Zhuang Li Cai.

For Respondents Chatfield Dean & Co., Inc. ("Chatfield Dean"), Frank L. Laudano ("Laudano"), and Alan Dillan ("Dillan") and for Third Party Respondents John Harth ("Harth"), Cheryl Bauman ("Bauman") and David Gurievsky ("Gurievsky") appeared Christa Taylor, Corporate Counsel for Chatfield Dean & Co., Inc.

Respondent Raymond John Acciardo, Sr. ("Acciardo") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: August 9, 1993.

Claimant's Submission Agreement signed on: August 29, 1993.

Joint Statement of Answer filed by Respondents Chatfield Dean and Laudano on:

October 6, 1993.

Respondent Chatfield Dean's Submission Agreement signed on: September 28, 1993.

Respondent Laudano's Submission Agreement signed on: September 28, 1993.

Respondent Acciardo's Statement of Answer, Counterclaim, Cross Claim and Third Party Claim filed: October 15, 1993.

Respondent Acciardo's Submission Agreement signed on: September 29, 1993.

Joint Statement of Answer to the Cross Claim and the Third Party Claim filed by Respondent Laudano and Third Party Respondents Harth, Bauman and Gurievsky on: November 4, 1993.

Third Party Respondent Harth's Submission Agreement signed on: November 1, 1993.

Third Party Respondent Bauman's Submission Agreement signed on: October 27, 1993.

Third Party Respondent Gurievsky's Submission Agreement signed on: October 29, 1993.

Respondent Acciardo's Reply to the Answer to the Cross Claim and Third Party Claim filed: November 29, 1993.

Respondent Dillan did not file a Statement of Answer nor execute a Submission Agreement.

#### **HEARING INFORMATION**

Pre-Hearing Conference:	June 7, 1994	-	One Session/ One Arbitrator
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Hearing Dates/Sessions:	December 6, 1994	-	Three sessions
	December 7, 1994	-	Two Sessions
	December 8, 1994	-	One Session

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

#### **CASE SUMMARY**

Claimants alleged that they opened a foreign investor account with Respondent Chatfield Dean for Chung Shui Man, Claimant Zhuang Li Cai's mother.

Claimants further alleged that Claimant Zhuang Li Cai had the power of attorney to manage the account, but that Claimant Chung Shui Man was to be liable for any taxes. Claimants also alleged that Claimant Chung Shui Man completed all the paper work and put her Canadian tax payer identification number and her Canadian address on the forms provided by Respondent Chatfield Dean. Claimants further alleged that Claimant Chung Shui Man did not fill out IRS Form 1078, but rather indicated on the form that it did not apply to her.

Claimants alleged that when Respondent Laudano took over the account, he asked Claimant Chung Shui Man to fill out another set of paperwork, including IRS Form 1078. Claimants further alleged that Claimant Zhuang Li Cai told Respondent Laudano that his mother cannot sign this form and that the form was returned with a note on it stating that Claimant Chung Shui Man was a resident of Canada.

Claimants alleged that they received a letter from Respondent Acciardo, in which he requested that Claimant Zhuang Li Cai fill out certain forms and provide his social security number. Claimants further alleged that Claimant Zhuang Li Cai did what was requested, but the problem was not resolved. Claimants alleged that they later received a letter from Respondent Dillan which stated that the account was set up with Claimant Zhuang Li Cai's name and social security number.

Claimants alleged that Respondent Dillan informed him that Respondent Chatfield Dean does not conduct business in Canada and, therefore, Respondent Chatfield Dean could not sell stock in the account under Claimant Chung Shui Man's tax identification number. Claimants maintained that, if Respondent Chatfield Dean cannot open an account for a Canadian resident, then all of their original investment money should be returned.

Claimants alleged they instructed Respondent Laudano to sell the Kushner-Locke securities, then to buy Main St. & Main, Inc. stock, and that Claimants would pay the difference. Furthermore, Claimants alleged that, when they did not receive a call confirming the transactions, Claimant Zhuang Li Cai called Respondent Laudano, who told him that they needed some paperwork for the account. Claimants also alleged that they did not immediately send out a check for the difference for the purchase of Main St. & Main, Inc. because their instructions were to first sell the Kushner-Locke securities and then to buy the Main St. & Main, Inc.

Claimants alleged that Respondent Laudano later instructed Claimants to send him a check for \$6,100.00 and that he would send Claimants a check for \$4,770.00. However, Claimants alleged that they sent the check to Respondent Laudano, but that they never received the check for \$4,770.00. Claimants also alleged that they later received a confirmation from Respondent Chatfield Dean, which indicated that thirty-nine shares of Main St. & Main, Inc. had been sold from

Claimants account. Claimants further alleged that they repeatedly demanded that the shares be put back in the account, but that the shares were never returned.

Respondents Chatfield Dean and Laudano maintained that, in April, 1992, Claimants opened a joint account and that Claimant Zhuang Li Cai was to have control over the account. Respondents Chatfield Dean and Laudano further maintained that the new account card which contained all of the necessary data, such as address and social security number, contained information relating to Claimant Zhuang Li Cai and not his mother, Claimant Chung Shui Man. Respondents also maintained that the account was coded as that of a resident alien because the account card showed that Claimant Zhuang Li Cai was not a citizen of the United States.

Respondents Chatfield Dean and Laudano maintained that Respondent Chatfield Dean's clearing broker mailed a Customer Agreement booklet and IRS Form 1078 to Claimant Zhuang Li Cai. Respondents Chatfield Dean and Laudano maintained that Claimants returned the signature pages from the Customer Agreement booklet, but that these forms lacked information regarding IRS Forms W-9 or W-8 and the joint account signature block was only signed by Claimant Zhuang Li Cai. Respondents Chatfield Dean and Laudano further maintained that neither Respondent Chatfield Dean nor its clearing broker received an IRS Form 1078 from Claimants which stated that Claimant Chung Shui Man was a Canadian resident. In addition, Respondents Chatfield Dean and Laudano maintained that, if Claimants had told them that one of the joint tenants was a Canadian resident, then they would never have opened the account.

Respondents Chatfield Dean and Laudano maintained that Respondent Laudano repeatedly explained to Claimant Zhuang Li Cai that Claimants needed to submit the missing paperwork. Respondents Chatfield Dean and Laudano further maintained that when Claimant Zhuang Li Cai wanted to sell 3,000 shares of Kushner-Locke securities, Respondent Laudano explained that they would have to withhold a sizeable portion of the proceeds because Claimants never submitted IRS Form W-8. Respondents Chatfield Dean and Laudano also maintained that Third Party Respondent Gurievsky, the branch office manager, explained to Claimant Zhuang Li Cai that Claimants could not sell the stock without a tax withholding.

Respondents Chatfield Dean and Laudano maintained that Third Party Respondent Gurievsky also explained to Claimant Zhuang Li Cai that thirty-nine shares of Main St. & Main, Inc. stock had been sold from Claimants account because Claimants had failed to pay the full purchase price of the stock by the settlement date. Respondents Chatfield Dean and Laudano further maintained that both Respondent Chatfield Dean and its clearing broker had an obligation to the federal government to withhold taxes from sales unless properly completed IRS Forms W-8 and 1078 had been received.

Respondents Chatfield Dean and Laudano maintained that, on April 6, 1993, Respondent Acciardo, Respondent Chatfield Dean's branch compliance officer, notified Claimant Zhuang Li Cai by letter that Respondent Chatfield Dean would close the account and deliver the stock certificates to Claimants, unless it received the completed paperwork by April 15, 1993. Respondents Chatfield Dean and Laudano further alleged that Claimants never submitted the paperwork and, therefore, the stock certificates were delivered out to Claimants, but that Claimants refused to take delivery of them.

Respondent Acciardo maintained that Claimants did not state a claim upon which relief can be granted. Respondent Acciardo further maintained that he should not be held liable to Claimants because the letters he wrote to Claimant were written pursuant to the direction of his supervisors. In addition, Respondent Acciardo maintained that he never advised Claimants about their tax liability with respect to the order of names on the account. Furthermore, Respondent Acciardo maintained that all of the trades in Claimants' account took place before he joined the firm and that, because his role in these events was limited, he should be exonerated and excused from this case.

For his counterclaim, Respondent Acciardo alleged that Claimants defamed his character and harmed his business reputation and that Claimants claims amounted to nothing more than a nuisance suit and was without foundation or merit. Respondent Acciardo also alleged that, because the Statement of Claim alleged fraud, he was required to disclose this matter on his U-4 which further subjected himself to scorn and ridicule.

For his cross claim, Respondent Acciardo maintained that Respondent Laudano should come forward and declare that he requested Respondent Acciardo's help in dealing with the Claimants. For his third party claim, Respondent Acciardo maintained that Third Party Respondent Harth should come forward and confirm that he instructed Respondent Acciardo to write a letter to Claimants, that Third Party Respondent Bauman should come forward and declare that she authorized Acciardo to write the letter to Claimants on April 6, 1993 and that Third Party Respondent Gurievsky should come forward and confirm that he ordered Respondent Acciardo to make the calls to Claimant Zhuang Li Cai.

Respondent Laudano and Third Party Respondents Harth, Bauman and Gurievsky maintained that Respondent Acciardo's claims had no basis and they also maintained that it was Respondent Acciardo's job to help with these types of situations.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$9,999.00, representing the drop in the market value of their investments, communication and documentation costs, and damages for mental and emotional suffering.

Respondents Chatfield Dean and Laudano requested that the Statement of Claim be dismissed in its entirety and that the panel award them attorney's fees and costs.

Respondent Acciardo requested that all claims against him be dismissed. For his counterclaim Respondent Acciardo requested \$50,000.00 for defamation of character and harm to his business reputation and \$25,000.00 for having to disclose this matter on his U-4.

Respondent Laudano and Third Party Respondents Harth, Bauman, and Gurievsky requested that Respondent Acciardo's cross claim and third party claim be dismissed in their entirety and that the panel assess costs and attorney's fees against Respondent Acciardo.

### **OTHER ISSUES CONSIDERED & DECIDED**

The arbitration panel made the following rulings as to Respondent Dillan who appeared at the hearings in this matter, but failed to file a Statement of Answer and a properly executed Submission Agreement:

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Respondent Dillan.
2. The panel found that, pursuant to Article I, Section (m) of the By-Laws of the NASD Manual, Respondent Dillan was an associated person of a member firm, namely, Chatfield Dean & Co., Inc., at the time this controversy arose. Consequently, the panel found personal jurisdiction over Respondent Dillan, pursuant to Section 12(a) of the NASD Code of Arbitration Procedure.
3. The panel found that Respondent Dillan was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement, pursuant to Section 25(b) of the NASD Code of Arbitration Procedure. In this regard, the panel found that the NASD properly served the Statement of Claim upon Respondent Dillan, pursuant to Section 25(a) of the NASD Code of Arbitration Procedure.

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.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Total Forum Fees:                \$1500.00        (3 Sessions x \$500.00)

- 1) Respondents, Unterberg Harris and Brian Finnerty are jointly and severally assessed the sum of \$750.00 representing one-half total forum fees due. Respondents be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$750.00.
- 2) Claimant is assessed the sum of \$750.00 representing one-half the total forum fees due, less \$500.00 previously paid, leaving \$250.00 due. Claimant be and hereby is liable and shall pay to the NASD the sum of \$250.00

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

ARBITRATORS' SIGNATURES

*Robert Herschman*

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Robert Herschman, Esq.  
Public Chairperson

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Kenneth Felder  
Public Arbitrator

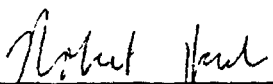
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James Noone  
Industry Arbitrator

Date of decision: February 29, 1996



I, **Robert Herschman, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

  
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Robert Herschman, Esq.

I, **Kenneth Felder**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

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Kenneth Felder

I, **James Noone**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

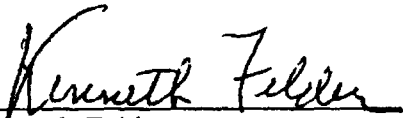
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James Noone

NASD Date of Decision: February 29, 1996

**ARBITRATORS' SIGNATURES**

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Robert Herschman, Esq.  
Public Chairperson



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Kenneth Felder  
Public Arbitrator

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James Noone  
Industry Arbitrator

Date of decision: February 29, 1996

I, **Robert Herschman, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

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Robert Herschman, Esq.

I, **Kenneth Felder**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

  
Kenneth Felder

I, **James Noone**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

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James Noone

NASD Date of Decision: February 29, 1996

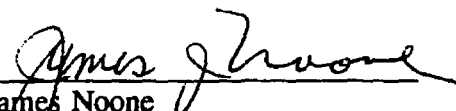
**ARBITRATORS' SIGNATURES**

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Robert Herschman, Esq.  
Public Chairperson

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Kenneth Felder  
Public Arbitrator



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James Noone  
Industry Arbitrator

Date of decision: February 29, 1996

I, **Robert Herschman, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

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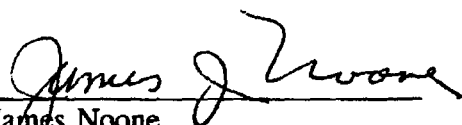
Robert Herschman, Esq.

I, **Kenneth Felder**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

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Kenneth Felder

I, **James Noone**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above captioned matter.

  
James Noone

NASD Date of Decision: February 29, 1996