

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Vincent Mure

vs.

Award No.
93-03160

Name of Respondents

Escalator Securities, Inc.
GSG Global Securities Group
John J. Kier
Douglas R. Benz
Lawrence R. Munck
Mark Simon
Keith Buscemi

REPRESENTATION

Claimant, Vincent Mure ("Claimant"), appeared pro se.

For Respondent, Escalator Securities, Inc. ("ESI"), Laurie C. Scala, in house counsel, located in Tapron Springs, Florida.

For Respondent, Global Securities Group ("GSG"), Wayne Scheck from Global Securities Group located in Great Neck, NY.

For Respondent John J. Kier, ("Kier"), Jerome Olitt, Esq. from Arbitration and Mediation Specialists, Inc. located in Stamford CT.

Respondent Douglas R. Benz ("Benz") appeared pro se.

Respondent, Lawrence R. Munck ("Munck") Charles G. Stiene, Esq. from the firm of Charles G. Stiene, Esq. located in Mineola, New York.

Respondent, Mark Simon, ("Simon") appeared pro se.

Respondent, Keith Buscemi ("Buscemi") appeared pro se.

CASE INFORMATION

Statement of Claim was signed on August 9, 1993.

Claimant's Submission Agreement was signed on January 31, 1994.

Claimant's Revised Statement of Claim was signed on January 28, 1994.

Statement of Answer was filed by Respondent, Benz on March 23, 1995.

Respondent Benz's Submission Agreement was signed on April 20, 1994.

Statement of Answer was filed by Respondent, Munck on April 25, 1994.
Munck's did not execute a Submission Agreement.

Statement of Answer was filed by Respondent Kier on September 12, 1994.
Respondent Kier's Submission Agreement was signed on July 29, 1994.

Escalator Securities, Inc. submitted a clarification request dated May 9, 1994.

GSG Global Securities Group did not submit an answer or execute a Submission Agreement.

Mark Simon did not submit an answer or execute a Submission Agreement.

Keith Buscemi did not submit an answer or execute a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: July 31, 1995 - 2 Sessions

Hearing Location: NASD offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimant brought a suit against Respondents alleging that they engage in unsuitable trades in connection with his accounts. Claimant emigrated to the United States from Berlin. He became employed as a machine operator by the Emhart Corporation, Black and Decker Division. He has difficulty speaking and understanding the english language. Claimant alleges that Respondents made misrepresentations regarding the growth potential of penny stocks and other speculative securities. Claimant also alleges that Respondents encouraged him to place his trust in them, in view of his lack of experience in investments. Claimant further alleges that the Respondents engaged in excessive trading to generate commissions, rather than to trade in the customers best interest. Claimant states that Respondents breached its fiduciary duties when they traded for their own self interest in generating commissions.

Claimant also states that Respondents negligently failed to supervise the activities of their registered representatives.

Respondents Escalator Securities, Inc., GSG Global Securities Group, John J. Kier, Douglas R. Benz, Lawrence R. Munck, Mark Simon, Keith Buscemi and Allvest Services, Inc., deny the allegations of wrongdoing set forth in the Statement of Claim.

Respondent Kier asserts nine affirmative defenses. Respondent, Munch, asserts two affirmative defenses.

RELIEF REQUESTED

Claimant requests compensatory damages of \$47,313.00, plus pre-and-post award interest.

Respondents request that the claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties in attendance at the hearing 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.

Respondent Benz submitted a Motion to Dismiss pursuant to Section 25(c) (1) of the *Code of Arbitration Procedure* ("Code"), and the Claimant submitted opposition, papers.

Respondent Benz also submitted a Motion to Time Bar Claim pursuant to Section of the Code.

Prior to the hearing, Claimant resolved his dispute with Respondent Escalator Securities, Inc.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Claimant has failed to sustain his burden of proof that the Respondents engaged in unsuitable trading or that the trades were made for purpose other than the investment objectives of the Claimant.
2. As an independent ground, the claim against Respondent Benz is barred by Section 15 of the NASD Code. At a minimum, more than six years elapsed from the date of the transactions in which Mr. Benz was involved and the commencement of this arbitration proceeding.
3. Furthermore, the claims are barred by the applicable three year Statute of Limitation. Lamp, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson III S. Ct. 2773 (1991).
4. Furthermore, even if claims subsequent to the initial trades involving Mr. Benz would not be barred as untimely, the Claimant waived his rights to recovery by ratifying the trades and the investment strategies employed. The Claimant admitted that he did not blindly follow the investment advice of the Respondents, but instead chose investments that he was persuaded would give him a favorable return. He also dealt with a succession of brokers, on the theory that "no one could be bad" and that, if he lost money on some stocks or made just a little money on others, the poor performers would be offset by high gains on others.
5. The panel recognizes that the Claimant, like all investors, did not have an objective to lose money in the stock market. The panel is also sensitive to overly aggressive sales techniques which unreasonably describe opportunities available through risky investments. However, the panel does not find credible Claimant's suggestion that, despite his limited command of the English language, he did not appreciate the risks involved and the nature of trades as he continued trading in similarly risky investments in 1987, 1988 and 1989. The Claimant has failed to prove that his losses came from anything other than the falling price of speculative investments, under circumstances which were, although not "expected" from a standpoint that the Claimant (or anyone) expected to lose money in the market, not "unexpected" either based upon the Claimant's knowledge of the market and the nature of his investments.

Costs in this matter are to be assessed against the Claimant.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following Forum Fees are assessed against the Claimant.

Non-refundable Filing Fee:	\$120.00	
Hearing Session Fee:	\$800.00	(2 hearing sessions @ \$400.00 per session)
Total Fees:	\$920.00	

1. Claimant previously paid \$520.00 and owes a balance of \$400.00.

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

ARBITRATION PANEL

Warren D. Hutchison	-	Public Chairperson
Howard M. Miller, Esq.	-	Public Panelist
Richard Lee Rotnem	-	Industry Panelist

Concurring Arbitrator's Signature


Warren D. Hutchison, Esq.

NASD Date of Decision: October 24, 1995

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