

e/r

9505131

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Stephen & Jessica Norko  
Mark McCoy  
Darlene Grace Allen  
Jack and Ligia Allen

93-03221

Name of Respondents

Paragon Capital Corporation  
Michael Bonkosky

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REPRESENTATION

For Claimants, Steven and Jessica Norko ("the Norkos"), Mark McCoy ("McCoy"), Jack and Ligia Allen ("the Allens"), and Darlene Grace Allen ("D. Allen"): Robert W. Pearce of Lerner and Pearce, P.A., Fort Lauderdale, Florida.

For Respondents, Paragon Capital Corporation ("Paragon") and Michael Bonkosky ("Bonkosky"): David Smith, Esq., of Smith Campbell and Paduano, New York, New York.

CASE INFORMATION

Statement of Claim filed: August 17, 1993, amended on March 28, 1994, and Second Amended Claim filed April 27, 1994 adding the Allens and D. Allen as Claimants. Claimants' Submission Agreements signed: July 27, 1993 by the Norkos, July 25, 1993 by McCoy, March 22, 1994 by D. Allen and March 11, 1994 by the Allens.

Respondent Bonkosky's Statement of Answer filed: December 23, 1993 and Amended by the Joint Answer filed on July 29, 1994. Respondent Paragon's Answer filed: December 20, 1993 and amended July 29, 1994.

Respondents did not sign Submission Agreements as required by Sections 12 and 25 of the Code.

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### **HEARING INFORMATION**

On February 13, 14 and 22, 1995, in Fort Lauderdale, Florida, hearings lasting 6 sessions were conducted.

### **CASE SUMMARY**

Claimants alleged that Respondents, through Bonkosky, made misrepresentations of and omissions to state material facts which induced Claimants to make purchase or sale transactions in equity securities, bonds and high risk margin trading strategies; induced D. Allen to sell all the stocks she inherited or that were held in trust for her; misrepresented to all Claimants that the maximum risk was 10%; failed to disclose the margin risks; engaged in trading programs and strategies unsuitable for each Claimant; controlled all of the Claimants' accounts and made unauthorized trades in those accounts; and, churned Claimants' accounts. Claimants alleged that Respondents' actions constituted fraud; breach of fiduciary duties; negligent management and supervision; breach of contract; and, violations of Section 517.301, 812.014 and 772.10, and 772.101-104, Florida Statutes and Section 10(b) of the 1934 Exchange Act.

Respondents denied allegations of wrongdoing and alleged that Claimants were fully advised of all risks; that all investment strategies were explained in detail, including margin; that D. Allen and her non-party husband were so pleased with Bonkosky that they referred Allen's parents, the Allens, and the Norkos to Bonkosky; that Mrs. Norko referred McCoy to Bonkosky because she was so happy with his services; that all trades were suitable and no unauthorized trades were made; and, that Claimants are simply disappointed investors.

Respondents alleged the affirmative defenses of Statute of limitations; that Claimants are precluded by contract from complaining after 10 days following confirms or account statements; that the aiding and abetting claims are barred; that the RICO claims must be dismissed because not based on criminal conduct; that punitive damages are prohibited; and, that Claimants failed to comply with Section 882.11, Florida Statutes.

### **RELIEF REQUESTED**

Claimants requested damages in excess of \$10,000.00 for the Norkos; \$10,000.00 for McCoy; \$35,000.00 for D. Allen; and \$20,000.00 for the Allens; plus interest at the legal rate for each Claimant; plus lost profits; restitution; punitive damages treble the amount of damages; treble actual damages; attorneys fees; and all costs expenses and filing fees.

Respondents requested dismissal, costs, attorneys fees and other relief.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

**AWARD**

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

1. Respondents, Paragon and Bonkosky, are found liable, jointly and severally, and shall pay to the Claimants the following amounts of compensatory damages, inclusive of interest:

the Norkos	\$ 7,618.00
McCoy	\$ 3,055.00
D. Allen	\$30,051.00
the Allens	\$ 9,968.00

for a total due to the Claimants of \$50,692.00.

2. Respondents are also liable, jointly and severally, and shall pay to the Claimants, interest at the legal rate of 12 % per annum from the date of this Award to the date of receipt of payment of this Award by the Claimants.

3. Respondents are also found liable, jointly and severally, and shall pay to the Claimants the amount of \$26,283.60 for attorney's fees pursuant to Section 517.211, Florida Statutes. The Panel has authority to award such fees based on the parties' submission of this issue to the Panel by their mutual requests for attorney's fees.

4. Respondents are further found liable, jointly and severally, and shall pay to the Claimants the amount of \$4,995.02 for costs.

5. Claimants' requests for punitive damages and RICO damages are denied. However, in lieu thereof, the Panel intends to make a disciplinary referral based upon the evidence adduced at the hearing of this matter.

**OTHER COSTS**

None.

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**FORUM FEES**

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$4,500.00 (6 sessions x \$750.00).
2. Respondents are hereby assessed \$4,500.00, jointly and severally, \$2,115.00 of which shall be paid directly to the Claimants, and \$2,385.00 of which shall be paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.
4. Respondents shall reimburse the Claimants \$200.00 for the non-refundable filing fee.
5. The NASD shall retain the session deposits totalling \$2115.00 paid by the Claimants for which they shall be reimbursed by the Respondents, as set forth above.

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

Concurring Arbitrators' Signatures

15/  
Nina Gordon, Esq.

15/  
Carl Hegner

15/  
Thomas L. Curran

Date of Decision: 5/1/95