

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

George Pucci and Kate Pucci

93-03423

Name of Respondents

Bradley Hummel & Co.
Phillips Appel & Walden

REPRESENTATION

For Claimants: Claimant George Pucci appeared pro se, Kate Pucci did not appear.

For Respondent Bradley Hummel & Co.: John J. Howard of Wilker, Gottlieb & Howard located in New York, NY.

For Respondent Phillips Appel & Walden: Phillips Appel & Walden did not appear.

CASE INFORMATION

Statement of Claim filed: August 23, 1993.

Claimant George Pucci's Submission Agreement signed on: George Pucci's on August 24, 1993.

Claimant Kate Pucci's Submission Agreement signed on: October 21, 1993.

Respondent Bradley Hummel & Co.'s Submission Agreement signed on:
Respondent Bradley Hummel & Co. did not submit a Submission Agreement.

Respondent Phillips Appel & Walden's Submission Agreement signed on:
Respondent Phillips Appel & Walden did not submit a Submission Agreement.

Page 2

NASD Award #93-03423

Statement of Answer and Motion to Dismiss filed by Respondent, Bradley Hummel & Co., on: January 26, 1994. Amended Statement of Answer and Motion to Dismiss filed by Respondent, Bradley Hummel & Co., on: July 13, 1994.

Statement of Answer filed by Respondent, Phillips Appel & Walden, on: Respondent Phillips Appel & Walden did not submit a Statement of Answer.

HEARING INFORMATION

Hearing Date / Sessions: Sept. 23, 1994 / One Session.

Hearing Location: National Association of Securities Dealers, Inc. offices located at New York, NY.

CASE SUMMARY

Claimants alleged that Respondents executed unauthorized trades in their account and that Respondents breached their fiduciary duty owed to Claimants. Claimant further alleged that monthly statements showed transactions in Claimants' account occurring at a time when Claimant George Pucci was incapacitated with a stroke and that said transactions could not have been initiated by Claimant George Pucci. Claimants also alleged that Respondents did not inform Claimants of dividends received in their account and had Claimants been aware of the monies received they would have invested the money in safe, conservative investments as opposed to reinvestment. Claimants alleged that all the individual brokers that Claimants dealt with at the Respondent firms were aware of Claimant, George Pucci's health following his stroke. Claimant, George Pucci, further alleged that Respondents' behavior aggravated his condition and hindered his recovery because he was placed under great stress.

Respondent Bradley Hummel & Co. maintained that Claimants failed to state a cause of action upon which relief could be granted and moved to dismiss Claimants' Statement of Claim. Respondent further maintained that Claimants insisted on having full control of his account and that Claimants authorized each transaction. Respondent maintained that Claimants on December 31, 1987, transferred their account valued at approximately \$3,700.

Additionally, Respondent Bradley Hummel & Co. set forth several affirmative defenses: Claimant failed to state a cause of action; the claim is barred by the applicable statutes of limitation; Respondent acted in good faith and did not violate any laws; the damages are speculative and not attributable to Respondent's

behavior; Claimants were in complete control; Claimant is estopped; respondent adequately supervised all brokers; and, Respondent did not make any unsuitable recommendations.

RELIEF REQUESTED

Claimants requested:

1. An award against Respondents of \$1,000,000, which represents actual/compensatory damages and punitive damages.

Respondent Bradley Hummel & Co. requested:

1. That Claimants' Claims be dismissed.
2. That its costs and attorneys fees be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

Claimants withdrew their claims against Respondent Bradley Hummel & Co. prior to the hearing in this matter.

Respondent Phillips Appel and Walden did not submit an Answer and Submission Agreement as required pursuant to Section 25(b)(1) of the NASD Code of Arbitration Procedure. Respondent Phillips Appel & Walden did not appear at the hearing in this matter.

AWARD

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

1. Claimants' claims are dismissed for Claimants' failure to state a cause of action and failure to prove the substantive facts of the case.
2. All claims for punitive damages are denied.

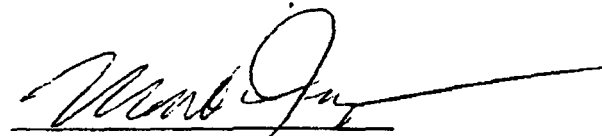
Page 4

NASD Award #93-03423

Concurring Arbitrators' Signatures

Name

Public Chairman



Martin Fogelman, Esq.

Name

Industry Panelist

Sidney D. Krasner

Name

Public Panelist

William G. Binckes, Esq.

Date of Decision: NOVEMBER 2, 1994

Page 5

NASD Award #93-03423

STATE OF: *New York*

SS:

COUNTY OF: *Queens*

On this *25* day of *October*, 1994, before me personally appeared Martin Fogelman, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Christine Goutzas

CHRISTINE GOUTZAS
Notary Public, State of New York
No. 016080296
Qualified in Queens County
Commission Expires 07/08/98

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared Sidney D. Krasner known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared William G. Binckes, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that the executed the same.

Page 4

NASD Award #93-03423

Concurring Arbitrators' Signatures

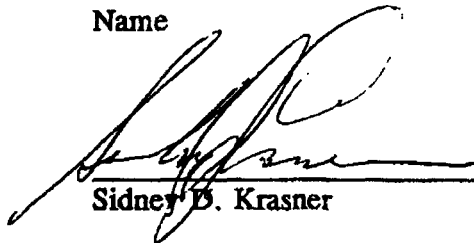
Name

Public Chairman

Martin Fogelman, Esq.

Name

Industry Panelist


Sidney B. Krasner

Name

Public Panelist

William G. Binckes, Esq.

Date of Decision: NOVEMBER 2, 1994

STATE OF:

SS:

COUNTY OF:

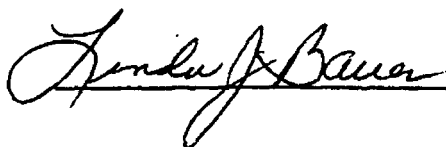
On this day of , 1994, before me personally appeared Martin Fogelman, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF: *New Jersey*

SS:

COUNTY OF: *Union*

On this *20* day of *October*, 1994, before me personally appeared Sidney D. Krasner known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



LINDA J. BAUER
A Notary Public of New Jersey
My Commission Expires 11/11/96

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared William G. Binckes, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that the executed the same.

Page 4

NASD Award #93-03423

Concurring Arbitrators' Signatures

Name

Public Chairman

Martin Fogelman, Esq.

Name

Industry Panelist

Sidney D. Krasner

Name

Public Panelist

William G. Binckes Esq.
William G. Binckes, Esq.

Date of Decision: NOVEMBER 2, 1994

Page 5

NASD Award #93-03423

STATE OF:

SS:

COUNTY OF:

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

STATE OF:

SS:

COUNTY OF:

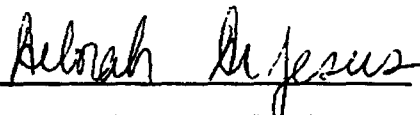
On this day of , 1994, before me personally appeared **Sidney D. Krasner** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF: NY

SS:

COUNTY OF: NY

On this 21 day of OCTOBER, 1994, before me personally appeared **William G. Binckes, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that the executed the same.



DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022978
Qualified in New York County
Commission Expires January 24, 1996