

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Charles L. and Miriam A. Williams

93-03469

Name of Respondents

James John Monteleone  
Aleksandr Shvarts  
\* Reynolds Kendrick Stratton, Inc.

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**REPRESENTATION**

For Claimants Charles L. and Miriam A. Williams ("Claimants"): Robert J. Donaghy, Attorney at Law

For Respondent: James John Monteleone ("Monteleone"): Edward R. Curtin, Esq. of the law firm of Gersten Savage Kaplowitz & Curtin

For Respondent Aleksandr Shvarts ("Shvarts"); Michael R. Koblenz, Esq. of the law firm of Mound Cotton & Wollan

For Respondent Reynolds Kendrick Stratton, Inc. ("RKS"): Jeffrey S. Kob, Esq. of the law firm of Miller Milove & Kob

**CASE INFORMATION**

Statement of Claim filed: September 3, 1993  
Claimants' Submission Agreement signed on: August 27, 1993

Statement of Answer, Cross-Claim and Third-Party Claim filed by Monteleone on: November 4, 1993  
Monteleone's Submission Agreement signed on: November 1, 1993

Statement of Answer, Cross-Claim and Third-Party Claim filed by Shvarts on: October 14, 1994

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Shvarts Submission Agreement signed on: October 7, 1994

Response to Third-Party Claim filed by RKS on: March 10, 1994

RKS's Submission Agreement signed on: October 6, 1994

### **HEARING INFORMATION**

Hearing Dates/Sessions:

March 6, 1995 - one session

March 7, 1995 - two sessions

April 10, 1995 - two sessions

Hearing Location: NASD District Office, Philadelphia, PA

### **CASE SUMMARY**

Claimants opened account number 61013107 with American Bond Group, Inc. ("ABG"). Claimants registered representative was Monteleone. Claimants alleged that Claimant Mr. Williams telephoned Monteleone at ABG and requested that Monteleone sell Claimants 1,700 shares and 6,050 warrants of Fonic, Inc. ("Fonic"). Claimants alleged that the Respondents never executed the sale of the Fonic securities. Claimants alleged that Respondents Monteleone and Shvarts provided Claimants with false verbal information regarding the sale of Fonic securities as well as the transmission of proceeds generated by the sale of Fonic shares and warrants.

Monteleone maintained that he properly handled Claimants account and committed no wrongdoing. Monteleone maintained, among other things, that when he received a sell order from Mr. Williams to sell 1,700 shares and 6,050 warrants of Fonic, he properly executed his client's order. Monteleone maintained that when he realized that Claimants' trades had not been entered on Claimants' account he confronted Shvarts. Monteleone alleged that Shvarts told him that there was a "backlog" and that Shvarts was having problems with RKS. Monteleone alleged that Shvarts told him that Claimants' trades would be entered as of the trade date, at the proper price and that he, Shvarts, would speak to Claimants. Monteleone cross-claimed against Shvarts and asserted a third-party claim against RKS for indemnification in the event any liability for Claimants' losses are ascribed to him. Monteleone also counterclaimed for consequential damages from Shvarts and/or RKS for their misconduct which he alleged virtually put him out of business. Monteleone also alleged that Shvarts owes him unpaid earned commission due and owing to him while he was at ABG.

Shvarts maintained that Monteleone did not enter sell orders initially but was to convey

additional information to Claimants. Shvarts maintained that when Monteleone contacted him no proper sell orders had been entered by Monteleone. Shvarts maintained that nonetheless, sell orders for the Fonic securities were immediately transmitted to RKS at the proper price. Shvarts maintained that although ABG had transmitted sell order tickets to RKS, RKS failed to effectuate the transactions. Shvarts maintained that he at all times acted properly and did everything within his power and scope of authority to execute Claimants' sell order. Shvarts maintained that he should not be held responsible for any losses sustained by reason of the failure of Monteleone to submit properly executed sell orders or for the misconduct of RKS. Shvarts further maintained that Monteleone cannot claim damages by reason of loss of income or commissions due to his failure to properly service his clients' accounts. Shvarts asserted a cross-claim against Monteleone and a third-party claim against RKS for full indemnification in the event any liability for Claimants' alleged loss is ascribed to him.

RKS categorically denied all allegations of wrongdoing and maintained that it acted in full conformance with the terms and conditions of its clearing agreement it had with ABG. RKS maintained that Monteleone and Shvarts have failed to state a claim against RKS and is not responsible to indemnify Monteleone and/or Shvarts.

#### **RELIEF REQUESTED**

Claimants requested damages in the amount of \$116,558.00, plus interest at 8% per annum, NASD fees and attorney's fees.

Monteleone requested that Claimants' claim be dismissed in its entirety and that in the event any liability for Claimants' losses are ascribed to him that he be fully indemnified by Respondent Shvarts and/or Third-Party Respondent RKS. Monteleone requested consequential damages of \$250,000 from Shvarts and/or RKS. Monteleone also requested damages from Shvarts in the amount of \$57,567.67 for unpaid commissions.

Shvarts requested that all claims asserted against him by either Claimants and Respondents be dismissed. Shvarts alleged that in the event any liability for Claimants' losses be ascribed to him that he be fully indemnified by Respondent Monteleone and/or Third-party Respondent RKS.

RKS requested that it be awarded its costs, expenses and reasonable attorneys' fees.

#### **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 may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

During the hearing, Respondent Monteleone voluntarily dismissed all cross-claims filed by him against Shvarts.

### **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. That all claims against Monteleone are denied in their entirety.
2. That Respondent Shvarts is liable to Claimants and shall pay to Claimants the sum of \$98,392.61; inclusive of interest.
3. That Third-Party Respondent RKS is liable to Shvarts. RKS shall partially indemnify Shvarts and shall pay to him the amount of \$68,874.83; inclusive of interest.
4. That any and all claims, cross-claims and counter-claims not specifically addressed are denied in their entirety.
5. That all parties shall bear their respective costs, including attorneys' fees, except as specifically addressed below.

### **FORUM FEES**

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

5 hearing sessions X \$750 = \$3750 .

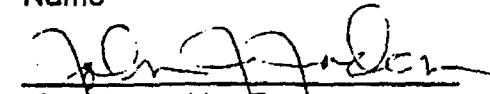
Forum Fees Assessed Against: Claimant to bear 1/3 of the forum fees, Shvarts to bear 1/3 of the Forum fees, RKS to bear 1/3 of the forum fees. No forum fees are assessed against Monteleone. Claimants are assessed forum fees in the amount of \$1,250; however, Claimants' are entitled to offset this amount with their hearing session deposit of \$750 so that the amount due from the Claimants is \$500. Shvarts shall pay forum fees in the amount of \$1,250. RKS shall pay forum fees in the amount of \$1,250.

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

Concurring Arbitrator's Signature  
Name

  
John J. Jordan, Esq.

Public/Industry

Public

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Concurring Arbitrator's Signature  
Name

Public/Industry

  
Glenn L. Nobel

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Concurring Arbitrator's Signature  
Name

Public/Industry

H. Payson Brickley  
H. Payson/Brickley

Public

24/1/95