

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
In the matter of the Arbitration Between

Name of Claimants

Sam and Mae Loguidice

NASD Arbitration
#93-03693

vs.

Name of Respondents

Robert Tretiak
First Montauk Securities Corporation
Seibt Financial Services, Inc.
Hans Seibt
Douglas W. Osborne
Osborne, Stern & Co.

REPRESENTATION

For Claimants: Douglas B. Martin, Esq., San Francisco, California

For Respondent Robert Tretiak: Joseph F. Kyle, Esq., Kyle & Kyle, Las Vegas, Nevada

For Respondent First Montauk Securities: Robert I. Rabinowitz, First Montauk Securities,
Red Bank, New Jersey

For Respondents Hans Seibt & Seibt Financial Services: Hans Seibt, Las Vegas, Nevada

CASE INFORMATION

Statement of Claim filed: September 17, 1993

First Amendment to Claim filed: December 22, 1993

Claimants' Submission Agreements signed: September 10, 1993

Statement of Answer and counterclaim filed by Robert Tretiak: December 27, 1993

Statement of Answer and cross-claim filed by First Montauk: January 3, 1994

Joint Statement of Answer filed by Hans Seibt and Seibt Financial Services: December 16, 1993

Reply of Claimants to counter-claim filed: January 5, 1994

Respondents' Submission Agreements signed:

Robert Tretiak:	December 16, 1993
First Montauk:	December 30, 1993
Seibt Financial:	November 24, 1993
Hans Seibr:	August 30, 1994

HEARING INFORMATION

Hearing dates/sessions:	August 29, 1994	-	2 sessions
	August 30, 1994	-	3 sessions

Hearing location: San Francisco, California

CASE SUMMARY

Claimants alleged that investments (including limited partnerships, common stocks, a real estate investment trust and gold and silver bullion contracts) recommended by Respondent Tretiak were speculative and high risk and not suitable for the retired and financially unsophisticated Claimants. Claimants further alleged that Respondent Tretiak inappropriately traded their account by trading penny stocks on margin; Claimants also alleged lack of supervision, fraud, churning, and breach of fiduciary duty.

Respondent Tretiak denied the allegations of wrongdoing, and asserted that Claimants were aware of the risks of investments, that only a small portion (10%) of Claimants' portfolio was placed in speculative securities with Claimants' specific assent, that Claimants made profits on certain investments, and that he was not involved in Claimants' purchase of the California REIT and the gold and silver bullion contracts. Respondent Tretiak asserted a counterclaim against Claimants for emotional distress, loss of business and personal reputation.

Respondent First Montauk denied the allegations of wrongdoing, and asserted that when Claimants' account was transferred in, it contained a number of high risk securities and had a debit balance. Respondent First Montauk further asserted that Claimants had failed to state a claim for which relief could be granted and that all claims were barred by applicable statutes of limitations. First Montauk asserted a cross-claim against Robert Tretiak for indemnification pursuant to the Affiliate Agreement between them.

Respondents Hans Seibt and Seibt Financial responded to the Claim by asserting that Robert Tretiak had never been their employee, and that clearing services only had been provided to him.

RELIEF REQUESTED

Claimants requested damages of approximately \$100,000 plus punitive damages, RICO damages, costs of arbitration and attorney's fees, and dismissal of the counter-claim filed by Respondent Tretiak.

Answering Respondents requested dismissal of the Claims. Respondent First Montauk requested contribution and indemnification from Robert Tretiak in the event of an award against it.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Douglas W. Osborne and Osborne, Stern & Co. were not located to be served, did not answer and did not enter an appearance. The panel acceded to Claimants' counsel's request that these Respondents not be considered part of this case. The award below does not include these Respondents.

Claimant Sam Loguidice died before the evidentiary hearing convened; his video-taped deposition was viewed and entered into the record by the panel. Mr. Loguidice's interest in this claim was pursued by his widow and executrix of his estate, Mae Loguidice.

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 remains on file with the NASD.

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. All Claims asserted against Hans Seibt and Seibt Financial Services are dismissed in their entirety.
2. Respondent Robert Tretiak is liable for and shall pay to Claimants the sum of \$52,360.

3. Respondents First Montauk and Robert Tretiak are jointly and severally liable for and shall pay to Claimants the sum of \$5,640.

4. The cross-claim of First Montauk for indemnification from Robert Tretiak is granted. Respondent Robert Tretiak is liable for and shall pay to First Montauk the amount of any damages paid to Claimants by First Montauk.

5. The counter-claim of Robert Tretiak is dismissed.

6. The Claimants' requests for punitive damages and RICO damages are dismissed.

7. The parties shall each bear their respective costs, including attorney's fees.

FORUM FEE

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain Claimants' non-refundable filing fee of \$200, but shall refund the \$750 hearing session deposit paid Claimants.

With respect to the cross-claim of First Montauk, the NASD shall retain the \$500 non-refundable filing fee.

With respect to the counter-claim of Robert Tretiak, the NASD shall retain the \$500 non-refundable filing fee.

All forum fees are to be split equally between First Montauk and Robert Tretiak.

Total forum fees:	
5 sessions @ \$750/session	\$3,750.00
First Montauk's one-half share	\$1,875.00

Robert Tretiak's one-half share	\$1,875.00
Credit for hearing session deposit	1,000.00

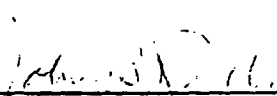
Balance due	\$ 875.00

Fees are payable to the NASD, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
John B. Reilley	Public
Albert F. Wulfekuhler, III	Public
George Stanley Guth	Industry

Concurring Arbitrators Signatures



John B. Reilley

Albert F. Wulfekuhler, III

George Stanley Guth

Date of Decision: _____

Date Served: 09/21/94

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
John B. Reilley	Public
Albert F. Wulfekuhler, III	Public
George Stanley Guth	Industry

Concurring Arbitrators Signatures

John B. Reilley

Albert F. Wulfekuhler, III
Albert F. Wulfekuhler, III

George Stanley Guth

Date of Decision: 9-14-94

Date Served: 09/21/94

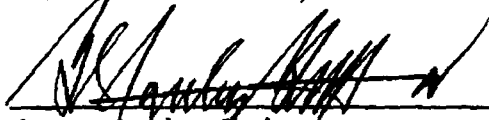
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Albert F. Wulfekuhler, III	Public
George Stanley Guth	Industry

Concurring Arbitrators Signatures

John B. Reilley

Albert F. Wulfekuhler, III



George Stanley Guth

Date of Decision: 9/8/94

Date Served: 09/21/94