

9/95

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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Securities Dealers, Inc.

In the Matter of the Arbitration Between

1995

Name of Claimant

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* Excel International, Inc.

93-03845

Names of Respondents

Kevin Mahon
Richard Guillot
Sheldon Kraft
Eric Emanuel
Emanuel & Co.

REPRESENTATION

For Excel International, Inc. ("Claimant") appeared Thomas J. Hamrahan, Esq., a sole practitioner located in New York, New York.

Respondents Kevin Mahon ("Mahon"), Sheldon Kraft ("Kraft") and Eric Emanuel ("Emanuel") appeared pro se.

Respondent Richard Guillot ("Guillot") and Respondent Emanuel & Co. did not enter an appearance at the hearing.

CASE INFORMATION

Statement of Claim filed: September 22, 1993.

Claimant's Submission Agreement signed on: September 22, 1993.

Joint Statement of Answer filed by Respondents Mahon, Guillot, Kraft, Emanuel and Emanuel & Co. on: May 12, 1994.

Respondent Mahon's Submission Agreement signed on: May 12, 1994.

Respondent Guillot's Submission Agreement signed on: May 13, 1995.

Respondent Kraft's Submission Agreement signed on: May 13, 1995.

Respondent Emanuel did not execute a Submission Agreement.

Respondent Emanuel & Co. did not submit a properly notarized Submission Agreement.

HEARING INFORMATION

Pre-hearing conference:	April 4, 1995	-	One Arbitrator
Hearing Dates/Sessions:	July 12, 1995	-	Two Sessions
	July 13, 1995	-	Two Sessions
	July 14, 1995	-	One Session

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that between October 14 and 16, 1992 it purchased 225,000 shares of Sphinx Natural Resources on the recommendation of Respondents for a total cost of \$228,646.00. Claimant further alleged that Respondents Mahon and Kraft represented to Claimant that the stock would pay a twenty-five cent cash dividend in the near future. Claimant maintained that this representation was made in reckless disregard for the truth, without due diligence, and solely for the purpose of generating commissions or markups.

Claimant alleged that, at the time the orders were made, it anticipated the receipt of funds to cover the trades, but that by October 12, 1992 it realized it was not able to pay for the trades. Claimant further alleged that, on October 12, 1992, its vice president notified Respondent Mahon that it was not able to pay, but that Respondent Mahon stated that since the stock had not been paid for it could not be sold.

Claimant further alleged that its officers were told that Claimant had to pay for the trade because there would be a stock dividend and/or stock spinoff and that if payment were not made, things would get "real ugly". Claimant maintained that Respondents further told its officers that they could not sell the stock because they did not own it and that if they continued trading they would make back the money they lost.

Claimant alleged that a total of \$98,000 was deposited in the account in October, 1992 and that subsequently, between October 22 and 27, 1992, the stock was sold for a total loss of \$71,478.00. In addition, Claimant alleged that other stock was sold to raise cash to carry the Sphinx position and resulted in a loss of \$4,000.00.

In their Joint Answer, Respondents Mahon, Kraft, Guillot, Emanuel and Emanuel & Co. asserted as affirmative defenses that the Statement of Claim failed to state a claim upon which relief may be granted; that Claimant failed to state with specificity any claim of wrongdoing as against Respondents; that Claimant's claims were barred by the equitable principles of estoppel, waiver and laches; and that Claimant authorized or ratified all of the transactions which were

conducted in the Claimant's account.

RELIEF REQUESTED

Claimant requested an award in its favor against Respondents jointly and severally in the amount of \$75,478.00 plus interest, costs and punitive damages.

Respondents Mahon, Kraft, Guillot, Emanuel, and Emanuel & Co. requested that all claims against them be dismissed summarily and sought an order directing that Claimant take nothing as to Respondents by its Statement of Claim. In addition, Respondents requested that Claimant reimburse their costs in defending this claim, including reasonable attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Emanuel & Co. and Guillot did not appear at the hearing in this matter. In addition, Respondent Emanuel & Co. did not file with the NASD a properly notarized Submission Agreement and Respondent Emanuel did not file with the NASD a properly executed Submission Agreement. The panel made the following ruling as to Respondent Emanuel and Co., Respondent Guillot and Respondent Emanuel:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondent Emanuel & Co. was a member of the NASD at the time this controversy arose and, consequently, the panel found personal jurisdiction over Respondent Emanuel & Co. pursuant to Section 12 of the Code.
3. In view of (2) above, the panel found that Respondent Emanuel & Co. was required to file with the NASD a properly notarized Submission Agreement pursuant to Section 25(b) of the Code. In this regard, the panel found that the NASD properly served the Statement of Claim upon Respondent Emanuel & Co. in accordance with Section 25(a) of the Code.
4. The panel found that Respondent Guillot was an associated person of a member of the NASD at the time the controversy arose, and, thus, the panel found personal jurisdiction over Respondent Guillot pursuant to Section 12 of the Code pursuant to Section 12 of the Code.
5. In accordance with Sections 21, 26 and 29 of the Code, the panel found that the NASD provided Respondent Emanuel & Co. and Respondent Guillot with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel, therefore, determined to proceed with the hearing without Respondent Emanuel & Co. and Respondent Guillot, whose absences were unexcused.
6. The panel found that Respondent Emanuel was an associated person of a member of the NASD at the time this controversy arose and, consequently, the panel

found personal jurisdiction over Respondent Emanuel pursuant to Section 12 of the Code of Arbitration Procedure.

7. In view of (6) above, the panel found that Respondent Emanuel was required to file with the NASD a properly executed Submission Agreement pursuant to Section 25(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Respondent Emanuel, pursuant to Section 25(a) of the Code.

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 originals remain 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 against Respondents Mahon, Guillot, Kraft, Emanuel and Emanuel & Co. be and hereby are dismissed in their entirety;
2. Each party shall bear their own costs, including attorneys' fees.
3. Claimant's request for punitive damages is hereby denied.
4. All other claims are hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 non-refundable filing fee previously submitted by Claimant and have assessed the following forum fees:

pre-hearing conference	= \$ 300.00
5 hearing sessions x \$500.00	= \$2,500.00
minus hearing session deposit	= <u>\$ 500.00</u>
total outstanding	= \$2,300.00

Respondents Kraft, Guillot, Mahon, and Emanuel & Co. be and hereby are jointly and severally liable for the amount of \$2,300.00 representing the total amount of outstanding forum fees.

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

ARBITRATORS' SIGNATURES



Allen Kilik, Esq.
Public Chairperson

Madelon M. Rosenfeld, Esq.
Public Arbitrator

Richard S. Peskin, Esq.
Industry Arbitrator

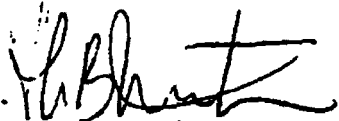
I, Allen Kilik, Esq., do hereby affirm that this is my decision in the above-captioned matter.



Allen Kilik, Esq.

Date of Decision: 

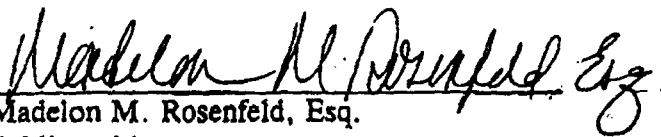
NASD Date of Decision: September 19, 1995



HELENA S. [illegible]
NOTARY PUBLIC
BY [illegible] [illegible]

ARBITRATORS' SIGNATURES

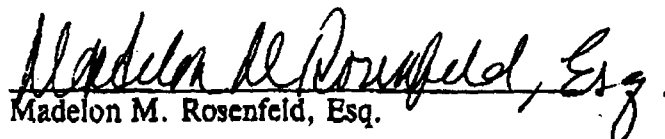
Allen Kilik, Esq.
Public Chairperson



Madelon M. Rosenfeld, Esq.
Public Arbitrator

Richard S. Peskin, Esq.
Industry Arbitrator

I, Madelon M. Rosenfeld, Esq., do hereby affirm that this is my decision in the above-captioned matter.



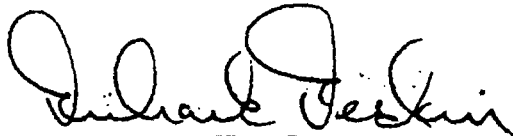
Madelon M. Rosenfeld, Esq.

Date of Decision: September 19, 1995

ARBITRATORS' SIGNATURES

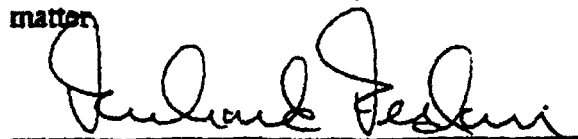
Allen Kilik, Esq.
Public Chairperson

Madelon M. Rosenfeld, Esq.
Public Arbitrator



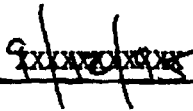
Richard S. Peskin, Esq.
Industry Arbitrator

I, Richard S. Peskin, Esq., do hereby affirm that this is my decision in the above-captioned matter



Richard S. Peskin, Esq.

Date of Decision: _____



NASD Date of Decision: September 19, 1995