

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Carolyn D. Seger

NASD Arbitration
No.93-03967

Name of Respondent

Financial Network Investment Corp.
Zuk & Associates, Inc.
Oscar Sasson

REPRESENTATION

For Claimant: M. Van Smith, Esq., Palo Alto, California

For Respondents: David S. Markun, Esq., and Robert L. Gonser, Esq., Zelle & Larson, San Francisco, California

CASE INFORMATION

Statement of Claim filed: September 29, 1993

Claimant's Submission Agreement signed: September 24, 1993

Joint Statement of Answer filed: December 17, 1993

Respondents' Submission Agreement signed:

Financial Network: December 21, 1993

Oscar Sasson: November 5, 1993

Zuk & Associates: This Respondent contested NASD jurisdiction. No submission agreement was submitted.

HEARING INFORMATION

A pre-hearing telephone conference lasting one session was held on August 19, 1994.

The evidentiary hearing was held in San Francisco, California, as follows:

October 6, 1994	-	1 session
June 6, 1994	-	2 sessions
June 7, 1994	-	1 session

CASE SUMMARY

Claimant alleged lack of suitability, failure to supervise, violations of NASD rules and fraud arising from the alleged improper switching of Claimant from one group of mutual funds to another. Claimant's substantial portfolio was invested almost entirely in mutual funds holding foreign equities which was diversified upon the advice of Respondent Sasson into a portfolio containing a more balanced mix of domestic and foreign debt and equity. The sale of one foreign equity fund caused the assessment of a small capital gains tax. Claimant was fully advised of all particulars of the investments she chose to make.

Respondents specifically denied the allegations of wrongdoing and asserted that Claimant not only suffered no damages, but that the new portfolio has substantially increased in value as a result of Respondent Sasson's recommendations.

RELIEF REQUESTED

Claimant requested damages of \$19,342.00 plus punitive damages in a like amount.

Respondents requested dismissal of all claims, and further requested an award of attorney's fees and punitive damages for the defense of a frivolous and malicious claim.

OTHER ISSUES CONSIDERED AND DECIDED

The hearing in this matter first convened on October 6, 1994. During that hearing, Claimant's non-attorney representative, after opening arguments and attempts to present Claimant's case, moved for an adjournment to obtain legal counsel for Claimant.

Respondents objected to an adjournment and moved for a non-suit, or at least for permission to present Respondents' position concerning Claimant's lack of damages.

The panel granted the adjournment request and instructed Respondents to renew their motions at the next hearing.

Respondents then moved for the panel chair's recusal; Claimant objected. After deliberation, the entire panel recused themselves, and the undersigned arbitrators were subsequently empaneled to hear the case.

Respondent Zuk & Associates, although responding to the Claim and appearing at the hearing, contested NASD jurisdiction based on its status as a non-member firm. At hearing before the undersigned panel, it was established that Zuk & Associates did not submit voluntarily to NASD jurisdiction. The panel, therefore, dismissed Zuk & Associates from this matter.

The parties have agreed that the Award in this matter may be executed in either 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. The panel finds Claimant's claim to be wholly without merit. Claimant's new portfolio is not only suitable for her, it is far more suitable than the previous portfolio. Claimant has suffered no damages; to the contrary, she has benefitted substantially from the investments recommended by Mr. Sasson. Claimant was extremely ill-advised to bring and maintain the present case. All claims are dismissed in their entirety against the remaining Respondents, Financial Network Investment Corp. and Oscar Sasson.

2. The Respondents requested an award of attorney's fees in the amount of \$35,124, based on the contention that this claim was meritless and frivolously brought, and that such fees are permitted pursuant to case law and statutory authority. The panel finds the normal American rule to be that each party bears its own attorney's fees, although such fees may be awarded where the Claimant "maintains an action without adequate factual basis and in bad faith." Nemeroff v. Abelson, 704 F2d 652, 654 (2d Cir., 1983). The panel finds that the present matter fits this description. The action was meritless and should not have been brought.

Claimant is liable for and shall pay Respondents' attorney's fees in the amount of \$15,000.00, payable to Zelle & Larson.

3. The panel orders that all reference to this claim be expunged from Respondent Sasson's Central Registration Depository record; it is not required to be reported in the future on any U-4 form for Oscar Sasson submitted by Respondents to the NASD.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$120 non-refundable filing fee paid by Claimant.

Claimant is assessed all forum fees.


One pre-hearing telephone conference @ \$300 / session	=	\$300.00
Four hearing sessions @ \$400 / session	=	\$1,600.00
		\$1,900.00
Credit for Deposit	=	\$400.00
Balance due	=	<u>\$1,500.00</u>

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Nancy Roberts Lonsdale	Public Chairperson
F. Richard Middaugh	Public Panelist
George Stanley Guth	Industry Panelist

Concurring Arbitrators' Signatures



Date Served: 07/07/95

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$120 non-refundable filing fee paid by Claimant.

Claimant is assessed all forum fees.

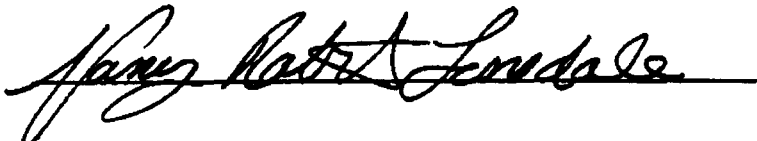
One pre-hearing telephone conference @ \$300 / session	=	\$300.00
Four hearing sessions @ \$400 / session	=	\$1,600.00
		\$1,900.00
Credit for Deposit	=	\$400.00
Balance due	=	<u>\$1,500.00</u>

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Nancy Roberts Lonsdale	Public Chairperson
F. Richard Middaugh	Public Panelist
George Stanley Guth	Industry Panelist

Concurring Arbitrators' Signatures



Date Served: 07/07/95

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$120 non-refundable filing fee paid by Claimant.

Claimant is assessed all forum fees.

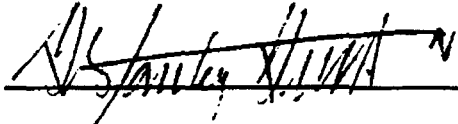
One pre-hearing telephone conference @ \$300 / session	=	\$300.00
Four hearing sessions @ \$400 / session	=	\$1,600.00
		\$1,900.00
Credit for Deposit	=	\$400.00
Balance due	=	<u>\$1,500.00</u>

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Nancy Roberts Lonsdale	Public Chairperson
F. Richard Middaugh	Public Panelist
✓ George Stanley Guth	Industry Panelist

Concurring Arbitrators' Signatures



Date Served: 07/07/95.