

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Triad Securities Corp.

94-01150

Name of Respondent(s)

Joel Krinsky d/b/a J & J Group

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 24, 1994, Claimant Triad Securities Corporation, through its counsel, Elizabeth Colantonio, Esq. of Gusrae, Kaplan & Bruno, New York, NY, alleged that Respondent Joel Krinsky d/b/a J&J Group owed them damages in the amount of \$8,525.29 arising out of a securities account opened by Respondent and maintained by Claimant. Claimant further alleged that Respondent opened a securities account with Claimant on or about January 25, 1993 and concurrently signed a Customer Agreement which stated in Paragraph 14, that Respondent agreed that all confirmations of transactions and statements of the Customer's Account are binding if not objected to in writing within 10 days after receipt. Claimant contended that on or about January 25, 1993, Respondent placed an order by telephone for the purchase of 5,000 shares of Commodore International Ltd. and that these shares were purchased on behalf of Respondent for a total of \$37,275.00 with a confirmation forwarded to Respondent. Claimant further contended that numerous attempts were made to collect payment for the transaction and that Respondent continually promised to pay with no check ever being sent. Claimant maintained that due to lack of payment Respondent's account was liquidated by selling the 5,000 shares of Commodore International Ltd. for a total of \$28,749.04 and that the difference between the purchase price and sale price should be paid to Claimant.

Respondent Joel Krinsky d/b/a J&J Group, through its attorney Gerald H. Van Dam, Esq. of Soble, Van Dam, Pearlman & Gittelsohn, Chestnut Hill, Mass., maintained that he was unable to answer in a timely fashion due to his inability to retain a legal representative. In his answer Respondent Joel Krinsky contended that Claimant violated NYSE rules in that they never asked Respondent about any financial data prior to opening his account; Respondent requested and never received a copy of the new account for his verification and signature; Respondent never received a partnership form or information as to the Truth in Lending Law and Respondent never received a margin form for signature until two weeks after the transaction. Respondent further contended that he contacted Claimant's representative on a number of occasions and that Claimant made no attempt to rectify the situation. Respondent asserted that Claimant violated many exchange rules, including Rule 405. On September 27, 1995, Respondent filed additional pleadings reiterating his original answer, and further maintained that Claimant lacked proper supervision in opening the account and "did not know the suitability of the people involved", thereby

violating the "Know Your Client Rule". Respondent Krinsky d/b/a J&J Group contended that Claimant, Triad Securities Corporation, is trying to protect itself and attempting to cover-up fraudulent and unethical business practices.

RELIEF REQUESTED

Claimant Triad Securities Corporation, requested \$8,525.29 in actual damages plus costs and attorneys' fees in the amount of \$12,147.50 incurred in connection with this matter.

With regard to Claimant's request for reimbursement of attorneys' fees, Claimant relied on Paragraph Nine (9) of the Confirmation of the trade involved in this dispute, which stated that Respondent will be liable for any balance due or loss incurred by Claimant. Claimant further relied on the following cases: First Interregional Equity Corp. v. Haughton, et al., 1993-94 FED. SEC. LAW R., Para. 98,065, page 98 (S.D.N.Y. 1994), Synergy Gas Co. v. Sasso, 853 F.2d 59, 64 (C.A.2 1988) *cert. denied*, 488 U.S. 944 (1988) and Neuberger & Berman v. Donaldson Lufkin & Jenrette Securities Corp., slip op. MC 65-16533, Index No. 16853/91 (N.Y.Sup.Ct. 1991).

Respondent Joel Krinsky d/b/a J&J Group, requested that the claims of the Claimant be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

1. The arbitrator ordered Respondent Joel Krinsky d/b/a J&J Group to submit a properly signed and notarized Uniform Submission Agreement, which he did not do.
2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Joel Krinsky d/b/a J&J Group was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Simon J. Tager, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 21, 1994. Respondent, Joel Krinsky and J&J Group failed to sign the Submission Agreement as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Joel Krinsky d/b/a J&J Group is liable and shall pay to Claimant, Triad Securities Corporation \$8,525.96 in actual damages.
2. Respondent, Joel Krinsky d/b/a J&J Group is liable and shall pay to Claimant, Triad Securities Corporation the amount of \$2,308.00 in interest.
3. Respondent, Joel Krinsky d/b/a J&J Group is liable and shall pay to

Claimant, Triad Securities Corporation, attorneys' fees in the amount of \$2,430.00, pursuant to the confirmation of trade agreement as indicated above.

4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent, Joel Krinsky d/b/a J&J Group is liable and shall pay \$575.00 to Claimant, Triad Securities Corporation as reimbursement of the filing fee.

Page
Award

AFFIRMATION

STATE OF

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SS:

COUNTY OF

I, SIMON J. TABER, do hereby affirm upon my oath as arbitrator that I am
the individual described herein and who executed this instrument, which is my award.

Simon J. Taber
Signature of Arbitrator

DATE OF DECISION: October 26, 1995