

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Richard and Susan D'Agostino  
Susan Flanagan  
Donald Florence  
Barbara Grasso  
Denise Grasso  
Grasso Construction, Inc.  
David & Elaine Warwick

vs.

Award No.  
94-01756

Name of Respondents

Gilford Securities, Inc.  
Steven Kashian  
John Wise  
Linda Schwartz

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**REPRESENTATION**

Claimants, Richard and Susan D'Agostino, Susan Flanagan, Donald Florence, Denise Grasso, Barbara Grasso, Grasso Construction, Inc., and David and Elaine Warwick, (herein collectively referred to as "Claimants") were represented by Jack Bryan Little, Attorney at Law, located in Boston Massachusetts.

Respondents, Gilford Securities, Inc., Steven Kashian and Linda Schwartz, (herein collectively referred to as "Respondents") were represented by Edward G. Werner, Attorney at Law, of the law firm of Kalmus & Martuscello, P.C. located in New York City, New York.

Respondent, John Wise ("Wise"), represented himself.

**CASE INFORMATION**

Joint Statement of Claim was filed by Claimants on May 10, 1994.

Richard and Susan D'Agostino's Submission Agreement was signed on April 25, 1994.

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Susan Flanagan's Submission Agreement was signed on April 25, 1994.  
Donald Florence's Submission Agreement was signed on April 25, 1994.  
Barbara Grasso's Submission Agreement was signed on April 25, 1994.  
Denise Grasso's Submission Agreement was signed on April 25, 1994.  
Grasso Construction, Inc.'s Submission Agreement was signed on April 25, 1994.  
David E. and Elaine Warwick's Submission Agreement was signed on April 25, 1994.

Joint Statement of Answer was filed by Respondents Steven Kashian and Gilford Securities, Inc. on July 21, 1994.

Respondent Gilford Securities, Inc.'s Submission Agreement was signed on July 20, 1994.

Statement of Answer was filed by Respondent, Linda Schwartz on April 5, 1995.  
Respondent Schwartz did not execute a Submission Agreement.

Statement of Answer was filed by Respondent, John Wise on July 21, 1994.  
Amended Statement of Answer was filed by Respondent Wise on March 23, 1995.  
Respondent Wise's Submission Agreement was signed on July 20, 1994.

#### **HEARING INFORMATION**

Pre-Hearing Conference:—	March 10, 1995	-	1 session
Hearing Dates/Sessions:	June 21, 1995	-	2 sessions
	June 22, 1995	-	2 sessions
	July 6, 1995	-	2 sessions
	July 7, 1995	-	2 sessions
Hearing Location:	American Arbitration Association 133 Federal Street 11th Floor Boston, MA 02110		

#### **CASE SUMMARY**

Claimants allege that they have virtually no experience in the purchase or sale of securities. The D'Agostinos allege that they informed Respondent Steven Kashian ("Kashian") that they had limited funds and therefore they were interested in "safe" investments. Claimant Susan Flanagan ("Flanagan") alleges that she was interested in an investment vehicle that would allow her to support herself after her divorce and these circumstances and her desire for "safe" investments were conveyed to Kashian. The Grassos and Grasso Construction, Inc., communicated to Kashian that they were not in a great financial situation and that they could not afford to lose their money. The Warwicks met Kashian in 1992 and they allege that they advised Kashian that

the funds they were investing constituted funds they had earmarked for retirement.

Claimants allege that they executed new account documents including margin agreements. Claimants contend that they had no previous experience with margin agreements or margin accounts and that Kashian failed to adequately explain the significance and the risks associated with margin accounts. Claimants also allege that Kashian, along with the assistance of Respondents, Wise and Schwartz, made misstatements of material fact, failed to disclose material facts and/or manipulated investment information in such a way so as to deceive the Claimants. Claimants further allege that Kashian, with the assistance of Respondents, Wise and Schwartz, made representations and guarantees regarding the performance of various investments. Claimants allege that it was negligent, grossly negligent, fraudulent and unsuitable for Kashian to effect these transactions, in light of the Claimants' financial circumstances, stated investment objectives and lack of experience or sophistication in financial matters and securities transactions. Claimants allege that Respondents breached their contract, their fiduciary duty and further alleges their conduct was negligent and fraudulent. Claimants also contend that Respondents violated the Massachusetts Securities Act and Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, Section 20 of the Securities Exchange Act of 1934 and Chapter 93A.

Respondents contend that Claimants are all sophisticated investors. Respondents allege that Claimant Florence was a family friend for over 25 years who recommended the other Claimants to Respondent Kashian. Respondent Kashian maintains that each Claimant conferred with Claimant Florence on trades for their account. Said Respondent also states that every trade in each Claimant's account was approved by the respective Claimant and that they did not object to any trading activity in their accounts until approximately 2 years after the trades were executed. Respondents assert fourteen affirmative defenses.

#### **RELIEF REQUESTED**

Claimants request an award as follows:

D'Agostinos	-	\$49,074
Flanagan	-	\$44,529
Florence	-	\$695,187
Warwick	-	\$346,983
Grasso Construction	-	\$48,075
Barbara Grasso and David Grasso	-	\$249,864

Alternative to the relief requested above, Claimants request: (1) an arbitration award in their favor which orders the Respondent to put Claimants into the position they would now be in, had Respondents properly managed and made suitable investments in their securities account; (2)

an award in Claimants' favor in an amount to be determined at the hearing, as disgorgement of the unjust enrichment obtained by Respondents through commissions and margin interest collected from the Claimants through the Respondents unlawful conduct; (3) an award in Claimants' favor in an amount equal to forty percent of the value of the award issued pursuant to prayers for relief above, as reasonable attorneys fees.

Respondents request that the Statement of Claim be dismissed in its entirety, that the Claimants be required to pay all filing fees and forums fees and that the Claimants be ordered to reimburse Gilford Securities, Inc. for their reasonable expenses, including all lodging, legal fees, travel costs, expert witness fees, and costs which are incurred in connection with the defense of these claims.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Schwartz submitted a motion to dismiss and Claimants submitted opposition papers to Respondent Schwartz's motion to dismiss. That motion was resolved in the Award Section of this decision.

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.

After the hearing was closed, Respondents Gilford, Kashian and Schwartz submitted post-hearing submission which was opposed by Claimants. The post-hearing submission was not considered by the Panel.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by Claimants are denied.
2. All other claims for relief are denied.

#### **FORUM FEES**

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

Non-refundable Filing Fee: \$250.00  
Pre-Hearing Conference Fee: \$300.00  
Hearing Session Fees: \$8,000.00 (8 hearing sessions @ \$1,000.00 per session)  
Total Fees = \$8,550.00

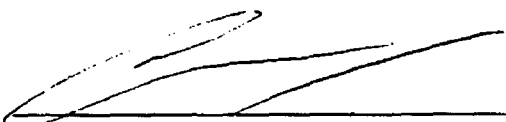
1. Claimants are jointly and severally assessed \$4,275.00. Claimants previously paid \$1,250.00 and owe a balance of \$3,025.00.
2. Respondents are jointly and severally assessed \$4,275.00.

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

**ARBITRATION PANEL**

Charles F. O'Connell, Esq.	-	Public Chairperson
Jeff B. Watson	-	Public Panelist
Brian T. Long	-	Industry Panelist

Concurring Arbitrator's Signature

  
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Charles F. O'Connell, Esq.

NASD Date of Decision: August 23, 1995

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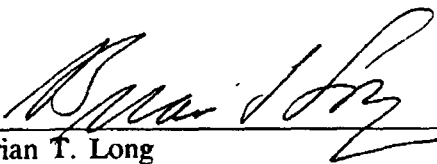
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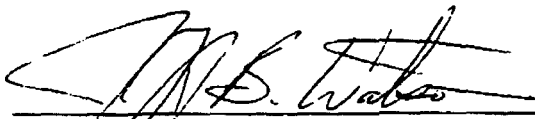
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