

N.A.S.D. AWARD

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimants

William & Valerie King

94-02278

Name of Respondents

Newby & Co.  
Steven T. Newby  
Mitchell A. Metzman

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**REPRESENTATION**

For Claimants William and Valerie King ("Claimants"): Arthur M. Schwartzstein, Attorney at Law, Washington, D.C.

For Respondents Newby & Co., Steven T. Newby and Mitchell A. Metzman (collectively referred to as "Respondents"): Gilbert W. Boyce, Esq. of the law firm of Kutak Rock, Washington, D.C.

**CASE INFORMATION**

Statement of Claim filed: June 15, 1994

Claimants' Submission Agreement signed on: June 14, 1994

Joint Statement of Answer filed by Respondents' on: September 9, 1994

Respondent Steven T. Newby's Submission Agreement signed on: September 6, 1994

Respondents Newby & Co. and Mitchell Metzman did not execute Submission Agreements.

**HEARING INFORMATION**

Hearing Dates/Sessions: June 12, 1995 - two sessions;

June 13, 1995 - two sessions; and June 14, 1995 - three sessions

Hearing Location: NASD District Office - Washington, D.C.

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### **CASE SUMMARY**

Claimants alleged, among other things, that Respondents made material misrepresentations to Mr. King. Claimants alleged that Respondents failed to ascertain Claimants financial circumstances or investment objectives. Claimants specifically asserted that Respondents, through their sales literature entitled Value Investing '92, induced Claimants to invest with Respondents. Claimants alleged that Respondents touted small capital stocks without disclosing the risks associated with these investments. Claimants alleged that Respondents improperly traded the Claimants' account on a discretionary basis without the authority to do so. Claimants alleged that Respondents violated NASD and NYSE Rules, federal and state securities laws, common law, Racketeer Influenced and Corrupt Organization Act ("RICO"), and breached their fiduciary duties and their contract with Claimants.

Respondents categorically denied all allegations of wrongdoing asserted by Claimants. Respondents maintained that they did not make any material misrepresentations to Claimants. Respondents maintained that they disclosed the risks of investing in Value Investing '92. Respondents also maintained that Claimants' account was a non discretionary account and that all trades executed in the account were authorized by Mr. King. Respondents maintained that all trades in the account were suitable for the Claimants.

### **RELIEF REQUESTED**

Claimants requested at the hearing the following damages: decline in the value of the account in the amount of \$25,212; treble damages in accordance with RICO and punitive damages in the amount to be determined by the Panel.

Respondents requested that Claimants' claim be dismissed in its entirety; and that Claimants bear all costs including filing and forum fees.

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

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.

The Panel determined that, although Respondents Newby & Co. and Mitchell Metzman did not execute Submission Agreements, pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code")

and the by-laws of the NASD, it had jurisdiction over Respondents Newby & Co. and Mitchell Metzman.

### **AWARD**

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

1. That Claimants' claim is denied in its entirety.
2. That the parties shall bear their own costs except as specifically stated below.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code, the following Forum Fees are assessed.  
7 sessions X \$500 = \$3,500

Forum Fees Assessed Against: 50% against Claimants and 50% against Respondents jointly and severally.

Therefore, Claimants are assessed forum fees in the amount of \$1,750; however, Claimants are entitled to offset this amount with their hearing session deposit of \$500 previously filed so that the net due from Claimants is \$1,250.

Respondents are jointly and severally assessed forum fees in the amount of \$1,750. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature  
Name

Public/Industry

/s/  
Bruce Sanders, Esq.

Public

/s/  
William J. Kerns, Jr.

Industry

/s/  
Albert D. Sturtevant

Public

Date Award Served by the NASD: June 20, 1995