

## **AWARD**

### **NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

In the Matter of the Arbitration Between

Name of Claimant

J.W. Charles Securities, Inc.

95-00814; 95-01118; 95-01217;  
95-01264; 95-01295; 95-01533;  
95-01534; 95-04973

Names of Respondents

Robert D. Keyser, Jr. and John T. Keyser  
John Hughes, Howard Feinmel, Paul Winkle,  
Chris Zafiroff, Al Poliak, Michael Winnick,  
Frank Vecchio

### **REPRESENTATION**

For Claimant J.W. Charles Securities, Inc. ("JWC"): Delmer C. Gowing, III, Esq. of Delray Beach, Florida and Charles E. Scarlett, Esq. of J.W. Charles Securities Corp., Boca Raton, Florida (see "Other Issues").

For Respondents Robert D. Keyser, Jr. and John T. Keyser ("the Keyzers"), John Hughes ("Hughes"), Howard Feinmel ("Feinmel"), Paul Winkle ("Winkle"), Chris Zafiroff ("Zafiroff"), Al Poliak ("Poliak"), Michael Winnick ("Winnick") and Frank Vecchio ("Vecchio"): L. Van Stillman, Esq., Boca Raton, Florida.

### **CASE INFORMATION**

Case #95-00814-(The Keyzers)-Statement of Claim filed: February 14, 1995.

Claimant's Submission Agreement/Corporate Acknowledgment signed on: February 14, 1995  
by Charles E. Scarlett, Esq. on behalf of JWC.

Respondents the Keyzers' Joint Statement of Answer and counterclaim filed: May 9, 1995.

The Keyzers' Submission Agreements signed on: May 17, 1995.

Case #95-01118-(Hughes)-Statement of Claim filed: March 1, 1995.

Claimant's Submission Agreement/Corporate Acknowledgment signed on: February 28, 1995  
by Charles E. Scarlett, Esq. on behalf of JWC.

Respondent Hughes' Statement of Answer and counterclaim filed: May 9, 1995.

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NASD Award #95-00814 (consolidated case)

Hughes' Submission Agreement signed on: May 9, 1995.

Case #95-01217-(Feinmel)-Statement of Claim filed: March 6, 1995.

Submission Agreement/Corporate Acknowledgment signed on March 6, 1995 by Gregory Tendrich, Esq. on behalf of JWC.

Respondent Feinmel's Statement of Answer and counterclaim filed: May 15, 1995.

Feinmel's Submission Agreement signed on: May 15, 1995.

Case #95-01264-(Winkle)-Statement of Claim filed: March 8, 1995.

Submission Agreement/Corporate Acknowledgment signed on: March 8, 1995 by Gregory Tendrich, Esq. on behalf of JWC.

Respondent Winkle's Statement of Answer and counterclaim filed: May 11, 1995.

Winkle's Submission Agreement signed on: May 10, 1995.

Case #95-01295-(Zafiroff)-Statement of Claim filed: March 8, 1995.

Submission Agreement/Corporate Acknowledgment signed on: March 8, 1995 by Gregory Tendrich, Esq. on behalf of JWC.

Respondent Zafiroff's Statement of Answer and counterclaim filed: May 11, 1995.

Zafiroff's Submission Agreement signed on: May 10, 1995.

Case #95-01533-(Poliak)-Statement of Claim filed: March 23, 1995.

Submission Agreement/Corporate Acknowledgment signed on: March 23, 1995 by Gregory Tendrich, Esq. on behalf of JWC.

Respondent Poliak's Statement of Answer and counterclaim filed: May 23, 1995.

Poliak's Submission Agreement signed on: May 23, 1995.

Case #95-01534-(Winnick)-Statement of Claim filed: March 23, 1995.

Submission Agreement/Corporate Acknowledgment signed on: March 23, 1995 by Gregory Tendrich, Esq. on behalf of JWC.

Respondent Winnick's Statement of Answer and counterclaim filed: May 23, 1995.

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NASD Award #95-00814 (consolidated case)

Winnick's Submission Agreement signed on: May 22, 1995.

Case #95-04973-(Vecchio)-Statement of Claim filed: October 16, 1995.

Submission Agreement/Corporate Acknowledgment signed on: October 9, 1995 by Gregory Tendrich, Esq. on behalf of JWC.

Respondent Vecchio's Statement of Answer and counterclaim filed: December 11, 1995.

Vecchio's Submission Agreement signed on: November 8, 1995.

A Joint Reply was submitted by Claimant dated September 9, 1995 to all of Respondents' Counterclaims.

#### **HEARING INFORMATION**

On January 23, 24, 27 and 28, 1997 hearings lasting eight (8) sessions were conducted in Fort Lauderdale, Florida.

#### **CASE SUMMARY**

Claimant alleged that Respondents executed addendums to their registered representative agreements wherein they agreed that if they terminated their contracts before a specified time, they each would reimburse JWC for the difference between the pay-outs received and the normal grid. Claimant maintained that Respondents terminated their agreements prior to their terms; therefore, each Respondent is responsible for paying the difference between the payout as defined in paragraph two (2) of the agreements and the normal grid.

Respondents, in each of their responses, set forth various defenses including constructive termination and the failure of the Claimant to deal fairly with its employees. Respondents further filed counterclaims for breach of contract, attorneys' fees and costs.

#### **RELIEF REQUESTED**

Claimant requested damages as follows from the Respondents:

Al Poliak	\$39,684.00
Howard Feinmel	\$12,499.00
John Hughes	\$114,727.00
Robert & John Keyser	\$86,176.00
Frank Vecchio	\$33,468.00

Claimant further requested punitive damages; that all costs of this arbitration be paid jointly and severally by all Respondents; and, that the counterclaims be dismissed.

Respondents requested that the arbitrators dismiss any and all claims made against them. Respondents further requested awards on their counterclaims and awards of their costs and stated in their pleadings that a court of competent jurisdiction may enter an order which may provide for an award of reasonable attorneys' fees for Respondents.

**OTHER ISSUES CONSIDERED & DECIDED**

1. 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 NASD Regulation, Inc.
2. At the commencement of the hearing the Panel was advised by Claimant's attorneys that Charles E. Scarlett, Esq. would be representing JWC with respect to the claims asserted against Respondent Michael Winnick and that Delmer C. Gowing, III, Esq. would be representing Claimant JWC with respect to the claims asserted against all other Respondents.
3. During the hearing the Panel was advised that Claimant had entered into a settlement agreement with Respondents Zafiroff, Winkle and Winnick. Thereafter, the matter continued with respect to Respondents Vecchio, the Keyzers, Feinmel, Poliak and Hughes.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Vecchio is found not liable and, therefore, all claims against him are hereby denied.
2. Respondents the Keyzers are found liable, jointly and severally, and shall pay to the Claimant the amount of \$26,176.00.
3. Respondent Feinmel is found liable and shall pay to the Claimant the amount of \$7,499.00.
4. Respondent Poliak is found liable and shall pay to the Claimant the amount of \$12,184.00.
5. Respondent Hughes is found liable and shall pay to the Claimant the amount of \$74,727.00.
6. Claimant's requests for punitive damages, attorneys' fees and costs are hereby denied.
7. Respondents' counterclaims are hereby denied.
8. Respondents' requests for attorneys' fees and costs are hereby denied.

**FORUM FEES**

Pursuant to Section 10205(c) (formerly section 44c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$8,000.00 (eight hearing sessions X \$1,000.00)

1. Claimant JWC is hereby assessed forum fees in the amount of \$8,000.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. by Claimant of \$7,000.00.
2. NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee paid by the Claimant.
3. The Claimant shall pay to NASD Regulation, Inc. the member surcharge of \$500.00 pursuant to Section 10333 of the Code of Arbitration Procedure.
4. Respondents the Keyzers, Hughes, Feinmel, Winkle, Zafiroff, Poliak, Winnick and Vecchio shall each pay to NASD Regulation, Inc. the sum of \$500.00 representing the claim filing fees for the counterclaims asserted, pursuant to Section 10205(a) of the Code of Arbitration Procedure.

Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

/s/

\_\_\_\_\_  
John Darling

Industry/Chairperson

/s/

\_\_\_\_\_  
Jack C. Aycock

Industry/Panelist

/s/

\_\_\_\_\_  
Edward S. DeSalvio

Industry/Panelist

Date of Decision: March 13, 1997