

**NASD REGULATION, INC.**

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In the Matter of the Arbitration Between

Name of Claimant

The Deukmedjian Revocable Family Trust

95-00967

Name of Respondents

Marsh Block & Company  
Alfred G. Block  
Kenneth Marsh  
Martin M. Berk  
Elizabeth O. Simone  
Kevin M. Mahon

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**REPRESENTATION**

For claimant, The Deukmedjian Revocable Family Trust ("claimant"), appeared Richard P. Swanson Esq., of the law firm Reid & Priest located in New York, New York.

For respondents, Marsh Block & Company ("MBC"), Alfred G. Block ("Block"), Kenneth Marsh ("Marsh"), Martin M. Berk ("Berk"), Elizabeth O. Simone ("Simone") and Kevin M. Mahon ("Mahon"), (collectively the "respondents"), appeared Ronald C. Minkoff, Esq., of the law firm Beldock Levine & Hoffman located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed: February 22, 1995.

Claimant's Submission Agreement signed on: March 20, 1995.

Joint Statement of Answer filed by respondents on: May 30, 1995.

Respondent MBC's Submission Agreement signed on: May 25, 1995.

Respondent Blocks's Submission Agreement signed on: May 25, 1995.

Respondent Marsh's Submission Agreement signed on: May 25, 1995.

Respondent Berk's Submission Agreement signed on: May 26, 1995.

Respondent Simone did not execute a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

Respondent Mahon did not execute a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure.

### **HEARING INFORMATION**

|                          |                    |   |              |
|--------------------------|--------------------|---|--------------|
| Pre-Hearing Conference:  | July 31, 1996      | - | One Session  |
| Hearing dates/sessions:  | September 24, 1996 | - | Two Sessions |
|                          | September 25, 1996 | - | Two Sessions |
|                          | September 26, 1996 | - | Two Sessions |
|                          | January 27, 1997   | - | One Session  |
|                          | January 28, 1997   | - | Two Sessions |
|                          | January 29, 1997   | - | Two Sessions |
|                          | February 21, 1997  | - | One Session  |
| Post-Hearing Conference: | May 14, 1997       | - | One Session  |

The hearings were held at the offices of NASD Regulation, Inc., located at New York, New York.

### **CASE SUMMARY**

Claimant alleged that Mrs. Theresa Deukmedjian was the Trustee of the claimant, The Deukmedjian Revocable Family Trust. Claimant further alleged that Mrs. Deukmedjian was a widow who needed to use the assets of the Trust to ensure that her children would be able to attend college. Claimant also alleged that MBC is a brokerage firm incorporated in New York. Claimant asserted that Block is the Chairman, President and Treasurer of MBC and that Berk is the Vice President and a registered representative. Claimant further asserted that Marsh is a registered representative of MBC and a control person of MBC. Claimant also asserted that Simone is the Chief Financial Officer of MBC, a control person of MBC and a registered representative. Claimant contended that Mahon was a registered representative of MBC and was assigned as the broker for Claimant's account.

Claimant further contended that, in 1993, Mrs. Deukmedjian contacted Kevin Mahon to inquire about investing in Burroughs Wellcome, a well known pharmaceutical company. Claimant also contended that she told Mahon that she was a widow, knew little about the stock market and wanted to invest so she could send her children to college. Claimant maintained that Mahon convinced her to sign an account agreement with MBC's clearing firm and deposit \$663,138.00 with MBC. Claimant further maintained that Mahon told Mrs. Deukmedjian that he could bring her a return of 20% per month. Claimant also maintained that Mahon convinced Mrs. Deukmedjian to invest in three stocks: Best Resources, Inc. ("Best Resources"), Integrated Resources Technologies, Inc. ("Integrated Resources") and International Sportsfest, Inc. ("Sportsfest"). Claimant alleged that Mahon told Mrs. Deukmedjian that these companies had fantastic future possibilities, that he knew their executives, and that the three companies were premier stocks and front-runners in performance and could return 20% per month. Claimant further alleged that Best Resources, Integrated Resources and Sportsfest were actually small start-up companies with no proven track record and were unsuitable for the claimant. Claimant also alleged that, between September 1993 and May 1994, the value of her investment in Best Resources declined from \$322,050.00 to \$162,720.00. Claimant asserted that, in September and October of 1993, Mahon purchased 40,000 shares of Integrated Resources for claimant's account at prices ranging from 3.09375 to 4.46875. Claimant further asserted that, between January 21, 1994 and January 26, 1994, Mahon sold all 40,000 shares at prices ranging between 1 3/4 and 2 1/16 creating a further substantial loss for claimant's account. Claimant also asserted that, in September and October 1993, Mahon purchased 25,000 shares

of Sportsfest for claimant's account at prices ranging from 7 3/4 to 9 3/4. Claimant contended that, by June 1994, Sportsfest shares had a market price of 2.

Claimant contended that Mrs. Deukmedjian demanded that Mahon withdraw the claimant's monies, but instead, he convinced her to stay with MBC and use a concept called "averaging down" to regain the money and obtain the 20% return he had promised. Claimant further contended that by July 1994, when Mrs. Deukmedjian removed the account from MBC, it had suffered a total loss of \$525,064.70.

Respondents maintained that, at the time Mrs. Deukmedjian contacted Mahon, she controlled approximately \$10,000,000.00 in assets and was actively involved in number of businesses and real estate investments. Respondents further maintained that Mrs. Deukmedjian indicated to Mahon that she had substantial assets and was a sophisticated investor interested in speculative investments. Respondents also maintained that Mahon told Mrs. Deukmedjian about emerging growth companies which offered greater risk and the possibility of a greater reward. Respondents contended that Mrs. Deukmedjian told Mahon she would be opening the account in the name of the Trust but she never told him that she was managing her husband's trust so that she could send her four children to college or that her primary investment objective was "capital preservation". Respondents further contended that Mrs. Deukmedjian authorized all of the purchases and sales of securities in the account and transferred personal assets and Trust assets totaling \$663,137.50 to pay for those purchases. Respondents also contended that Mahon told Mrs. Deukmedjian the investments she was making were in start up companies that did not pay dividends or earn income and that they involved substantially greater risk than mutual fund investments or investments in more established companies but also held the possibility of a greater return.

#### **RELIEF REQUESTED**

Claimant requested: Restoration of the principal of claimant's account, punitive damages, interest, costs and attorney's fees, and such further relief as may be deemed just.

Respondents requested that the claimant's Statement of Claim be dismissed and that they be awarded the costs and disbursements of this action and such other and further relief as is just, proper and equitable.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

By letter dated April 27, 1995, NASD Regulation, Inc. was advised that claimant dismissed Ben B. Stein as a respondent in this matter.

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.

#### **AWARD**

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

1. Respondents, Marsh Block & Company, Alfred G. Block and Kevin M. Mahon be and hereby are jointly and severally liable and shall pay to the claimant, The Deukmedjian Revocable Family Trust, \$380,898.75 plus simple interest @ 6% per annum from

May 31, 1994.

2. All claims against Respondents Kenneth Marsh, Martin M. Berk, and Elizabeth O. Simone are dismissed in their entirety.
3. All requests for attorney's fees are denied.
4. All requests for punitive damages are denied.
5. All other requests for relief are denied.

#### **FORUM FEES**

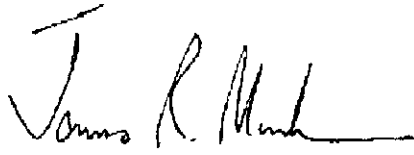
Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following forum fees:

|                                  |               |
|----------------------------------|---------------|
| 1 Pre-Hearing Session x \$300.00 | = \$300.00    |
| 12 Hearing Sessions x \$1000.00  | = \$12,000.00 |
| Total Forum Fees assessed:       | = \$12,300.00 |

Claimant, The Deukmedjian Revocable Family Trust, be and hereby is liable and shall pay to NASD Regulation Inc. \$6,150.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc. Therefore, claimant, The Deukmedjian Revocable Family Trust, shall pay to NASD Regulation, Inc. the sum of \$5,150.00.

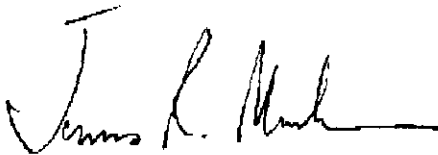
Respondents be and hereby are jointly and severally liable for \$6,150.00 representing one-half of the forum fees assessed. Therefore, respondents shall pay to NASD Regulation, Inc. the sum of \$6,150.00.

Fees are payable to NASD Regulation, Inc.



James R. Madan

I, James R. Madan, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



James R. Madan

Date of Decision: June 12, 1997

GLORIA MESSINGER  
Gloria Messinger, Esq.

I, Gloria Messinger, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Gloria Messinger, Esq.  
Gloria Messinger, Esq.

Date of Decision: June 12, 1997

**ARBITRATORS' SIGNATURES**



Richard W. Vallario, Esq.

I, Richard W. Vallario, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Richard W. Vallario, Esq.

Date of Decision: June 12, 1997