

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

**New Island Management Advisors, L.P.
General New Island, Inc.**

95-01134

Name of Respondents

**Evan Stoopler
Julian Stoopler
Ehrenkrantz King Nussbaum, Inc.**

REPRESENTATION

For Claimant, New Island Management Advisors, L.P. ("New Island") and General New Island, Inc. (collectively the "Claimants"), appeared Dan Druz, Esq., a sole practitioner located in Manasquan, New Jersey.

For Respondent, Evan Stoopler and Julian Stoopler (collectively the "Stooplers"), appeared David Slone, Esq., of the law firm Tenzer Greenblatt located in New York, New York.

For Respondent, Ehrenkrantz King Nussbaum, Inc. ("EKN"), appeared Thomas A. Catalano, Esq., of the law firm Lester Schwab Katz & Dwyer located in New York, New York.

CASE INFORMATION

Statement of Claim filed: April 6, 1995.

Claimants' Submission Agreement signed on: February 20, 1995.

Joint Statement of Answer filed by the Julian and Evan Stoopler on: May 26, 1995.

Evan Stoopler's Submission Agreement signed on: June 5, 1996.

Julian Stoopler's Submission Agreement signed on: June 5, 1996.

Statement of Answer filed by Respondent Ehrenkrantz King Nussbaum, Inc. on: May 26, 1995.

Respondent Ehrenkrantz King Nussbaum, Inc.'s Submission Agreement signed on: May 25, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	April 25, 1996	-	One Session
Hearing dates/sessions:	January 24, 1994	-	Two Sessions
	March 13, 1997	-	Two Sessions

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

CASE SUMMARY

Claimants alleged that the Evan and Julian Stoopler were registered representatives for Ehrenkrantz King Nussbaum, Inc. ("EKN") and that Julian Stoopler supervised the work of his son, Evan Stoopler.

Claimants alleged that, on August 12, 1994, Evan Stoopler approached Seymour Schwartz ("Schwartz") the president of General New Island, Inc., which acts as general partner of New Island, about managing New Island's portfolio. Claimants alleged that Evan Stoopler's stated objective was to obtain trading profits. Claimants alleged that Evan Stoopler showed Schwartz his own portfolio which was well diversified and had performed extraordinarily well. Claimants alleged that Evan Stoopler stated that he would manage the New Island account in the same fashion as his own. Claimants alleged that Evan Stoopler represented that all positions would be closed out within a few days after being opened and always within a week or so.

Claimants alleged that the account was opened on August 16, 1994, with \$200,000.00 and shortly thereafter Evan Stoopler sold short a total of 4000 shares of 3COM at a cost of \$241,500.00. Claimants alleged that the transaction was misidentified as "unsolicited." Claimants further alleged that, on October 28, 1994, Schwartz asked Evan Stoopler about positive news reports in the Wall Street Journal and the New York Times regarding 3COM which could lessen the value of their short position. Claimants alleged that Evan Stoopler responded that he hadn't seen the Times article and that he did not read the Wall Street Journal. Claimants also alleged that on August 24, 1994, Evan Stoopler purchased short 2000 shares of Best Buy Company ("Best Buy") for \$64,374.00.

Claimants further alleged that Respondents negligently managed the account and failed to comply with the applicable rules and regulations of the NASD by making transactions without regard to New Island's investment objectives and by misidentifying the transaction as "unsolicited." Claimants also maintained that Respondents violated the Securities and Exchange Act of 1934 and Rule 10b-5 by making false statements and omitting material facts in providing advice and projections to New Island.

Claimants alleged that the Respondents breached their contractual obligations to provide competent, professional services in accordance with the rules and regulations of the NASD and industry customs, practices and standards. Claimants alleged that Respondents breached their fiduciary responsibilities by failing to properly monitor positions in Claimant's accounts. Claimants also alleged that Respondents failed to properly supervise Evan Stoopler.

Respondent EKN maintained that it employed Evan and Julian Stoopler as registered representatives. EKN maintained that Evan Stoopler and Schwartz agreed that Evan Stoopler would manage the New Island account in a manner essentially similar to his own. EKN maintained that the account was opened on August 16, 1994, with a deposit of \$200,000.00 used to purchase short positions of 3COM. EKN maintained that the 3COM transaction should have been designated by Evan Stoopler as "discretion exercised" instead of as "unsolicited".

EKN maintained that the Client Agreement signed by New Island required that any objection to any trade must be made in writing within twenty business days after the confirmation is mailed. EKN further maintained that Claimants failed to make any objection to the aforementioned transactions. EKN further maintained that Schwartz held himself out to be a sophisticated investor and at all times retained control over the New Island account.

EKN maintained that Claimants' claims should be dismissed since the alleged losses were proximately caused by the Claimants' own negligence and that any losses were the result of market price fluctuations beyond the control of EKN. EKN maintained that Claimants failed to mitigate their damages and that Claimants assumed the risk of trading securities.

Respondent, Evan Stoopler, maintained that during all relevant times he was a registered representative of EKN. Evan Stoopler maintained that Schwartz was his accountant and had access to his private financial information. Evan Stoopler maintained that after Schwartz reviewed his trading profit and loss information Schwartz approached him about participating in his trading strategy. Evan Stoopler contended that Schwartz stated he had established New Island as an investment vehicle where he grouped his clients funds together and asked Evan Stoopler to trade for New Island. Evan Stoopler maintained that Schwartz stated that he traded at Merrill Lynch and other brokerage firms but was not satisfied with the results. Evan Stoopler maintained that Schwartz informed him that he had been investing for forty years and was a sophisticated investor who wished to pursue an aggressive trading strategy.

Evan Stoopler maintained that, prior to opening an account for New Island, he met with Schwartz and explained the risks of trading securities and Schwartz indicated he was willing to accept those risks and reiterated his trading experience. Evan Stoopler maintained that Schwartz was aware that New Island's

account could not be traded exactly like his because of capital and other restrictions but that he would conduct business in the New Island account, to the same extent possible, as he did for his own account.

Evan Stoopler maintained that the parties agreed that the trading authorization would be given to him and Schwartz; however, Schwartz would not initiate any trades without prior notice to Evan Stoopler.

Evan Stoopler alleged that he and Schwartz discussed the fact that the price of 3COM was going up and that Schwartz directed him to maintain the short position because he believed the price of 3COM would go down.

Evan Stoopler also alleged that, pursuant to Schwartz's instructions for settlement, on October 12, 1994, 3,000 shares of 3COM were purchased to cover a portion of New Island's short position.

Evan Stoopler maintained that no false statements were ever made to Schwartz and that they fulfilled all of their contractual obligations and acted in accordance with the rules and regulations of the NASD.

RELIEF REQUESTED

Claimants requested damages in the amount of \$91,000.00; costs, expenses and disbursements including reasonable attorneys' fees; and for such other relief as the arbitration panel deems just.

Respondent, EKN requested that all claims be dismissed together with an award of costs and disbursements and for such other relief as may be just.

Respondents, Evan Stoopler and Julian Stoopler, requested that all claims be dismissed and an award of costs of the arbitration.

OTHER ISSUES CONSIDERED AND 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 NASD Regulation, Inc.

AWARD

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

1. No evidence having been presented against Respondent Julian Stoopler, all claims against him are dismissed.
2. Respondent Ehrenkrantz King Nussbaum, Inc. shall pay to the Claimants, New Island Management Advisors, L.P. and General New Island, Inc. the sum of \$17,000.00 plus interest at 9% from May 21, 1993 to the present date;
3. Respondents Evan Stoopler shall pay to the Claimants, New Island Management Advisors, L.P. and General New Island, Inc. the sum of \$2000.00 plus interest at 9% from May 21, 1993 to the present date;
4. All parties shall bear their respective costs, including attorney's fees; and,

5. All other requests for relief are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$150.00 non-refundable filing fee previously deposited by the Claimants and have assessed the following forum fees:

Pre-Hearing Session Fees:	\$ 300.00 (1 Session x \$300)
Hearing Sessions Fees:	\$2,000.00 (4 Sessions x \$500)
Total Forum Fees:	\$2,300.00

Claimants New Island Management Advisors, LP and General New Island, Inc. are jointly and severally assessed \$1,150.00 representing one-half of the forum fees due, less \$500.00 previously deposited, leaving \$650.00 due. Claimants New Island Management Advisors, LP and General New Island, Inc. are jointly and severally liable and shall pay to NASD Regulation, Inc.

Respondents, Ehrenkrantz King Nussbaum, Inc. are assessed \$1,150.00 representing one-half of the total forum fees due. Respondents, Ehrenkrantz King Nussbaum, Inc., is liable and shall pay to NASD Regulation, Inc. the sum of \$1,150.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

I, Joseph H. Lewis, 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 decision in the above-captioned matter.

Joseph H. Lewis, Esq.

I, William A. Macdonald, 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 decision in the above-captioned matter.

William A. Macdonald, Esq.

I, Jerome Levy, 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 decision in the above-captioned matter.

Jerome Levy

Date of Decision: JULY 21, 1997

ARBITRATORS' SIGNATURES

I, **Joseph H. Levie, 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 decision in the above-referenced matter.

Joseph H. Levie, Esq.

I, **William A. Mechnann, 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 decision in the above-referenced matter.

William A. Mechnann, Esq.

I, **Jerome Levy**, 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 decision in the above-referenced matter.

Jerome Levy

Date of Decision: JULY 21, 1997