

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

George Diacoumakos  
Kenneth A. Barton

95-02833

Name of Respondent(s)

M.H. Meyerson & Co., Inc.  
Joseph Schmidt

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**REPRESENTATION**

For Claimants, Kenneth A. Barton ("Barton") and George Diacoumakos ("Diacoumakos"), collectively ("Claimants") appeared Peter Pearlman, Esq. of the firm Cohn, Lifland, Pearlman, Hermann & Knopf located in Saddlebrook, N.J.

For Respondents, M.H. Meyerson & Co., Inc. ("Meyerson") and Joseph Schmidt ("Schmidt"), collectively ("Respondents"), appeared Joel C. Haims, Esq. of the firm Heller, Horowitz & Feit, P.C., located in New York, N.Y.

**CASE INFORMATION**

Statement of Claim filed: June 12, 1995

Claimant Barton's Submission Agreement signed on: May 8, 1995

Claimant Diacoumakos' Submission Agreement signed on: May 9, 1995

Joint Statement of Answer filed by Respondents: November 2, 1995

Respondent Meyerson's Submission Agreement signed on: October 24, 1995

Respondent Schmidt's Submission Agreement signed on: October 24, 1995

**HEARING INFORMATION**

Hearing Dates/Sessions:      April 29, 1995      - 2 sessions

Hearing Location: The hearings were held at the offices of the National Association of Securities Dealers located in New York, N.Y. and at the City Midday Club located in New York, N.Y.

### **CASE SUMMARY**

Claimant Barton alleged that he opened an account with Respondents in early 1991. Claimant Barton further alleged that he informed Respondents that he could not take any unnecessary risks as he had previously lost in excess of \$700,000.00 in the stock market and the bulk of funds he had to invest were from a home equity line and Respondent Schmidt represented that he would keep all risks to a minimum. Claimant Barton contended that Schmidt recommended and caused him to invest in a series of highly speculative securities over the course of a number of years. Claimant further contended that these securities included Starstream Communications, Hemdale Comm., Inc., Thermascan, Inc., Angstrom Technologies, International Vitamin and American Asset Management Corp. Claimant Barton alleged that Respondents failed to execute trades when directed to, churned his account and breached their duties to him. As a result of the above, Claimant Barton alleged that he has suffered a loss for which Respondents should be held liable.

Claimant Diacoumakos alleged that he opened an account with Respondents in January, 1992 and explained that his investment objectives were to conservatively invest with a view to obtaining gain and minimum risk to capital. Claimant Diacoumakis further alleged that pursuant to Schmidt's recommendation he purchased shares of Peerless Productions which later became Hemdale Communications and eventually owned 4,600 shares and 70,000 warrants. Claimant Diacoumakos contended that Schmidt refused to sell the Hemdale securities when directed to do so which caused him to suffer a loss for which Respondents should be held liable.

Respondents maintained that Claimants were at all times relevant herein sophisticated investors, possessing the knowledge and ability to understand and evaluate speculative investments and they had the financial ability to make such investments. Respondents further maintained that Claimant Barton did not tell Respondents that he could not afford to take unnecessary risks or that the bulk of the funds to be invested were coming from a home equity loan. Respondents contended that Barton clearly expressed the ability and desire to invest in speculative investments, including but not limited to initial public offerings. Respondents further contended that Diacoumakos did not inform them that his investment objective was conservative or that he could not afford to take unnecessary risks. Respondents maintained that they did not recommend unsuitable investments, execute unauthorized trades, fail to execute transactions or churn Claimants accounts.

### **RELIEF REQUESTED**

Claimant Barton requested \$380,493.50 in actual damages.

Claimant Diacoumakos requested \$115,087.25 in actual damages.

Respondents requested that the claims of the Claimants be dismissed in their entirety and that they be awarded their fees, costs and reasonable attorney's 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.

### 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) Respondents be and hereby are jointly and severally liable and shall pay to Claimant Barton \$124,000.00 in actual damages.
- 2) Respondents be and hereby are jointly and severally liable and shall pay to Claimant Diacoumakos \$35,000.00 in actual damages.
- 3) Each party shall bear their respective costs, including attorney's fees.
- 4) All other claims be and hereby are denied.

### FORUM FEES

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

Non-refundable filing fee:	\$200.00
4 hearing sessions x \$750.00:	\$3,000.00
Total Forum Fees assessed:	\$3,200.00

- 1) Claimants be and hereby are jointly and severally liable for \$1,600.00 representing one half of forum fees assessed. Claimants previously deposited \$950.00 with the NASD and accordingly shall pay the balance of \$650.00.
- 2) Respondents be and hereby are jointly and severally liable for \$1,600.00 representing one half of forum fees assessed.

Arbitrator's Signature  
Name

\_\_\_\_\_  
Gerald Alpert, Esq.

I, Gerald Alpert, Esq., do hereby affirm that this is my decision in the above-captioned matter.

\_\_\_\_\_

Date of Decision: \_\_\_\_\_


Arbitrator's Signature  
Name

\_\_\_\_\_  
Clifford Harwick

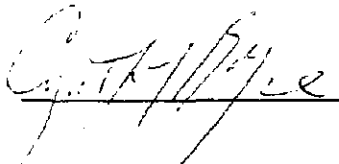
I, Clifford Harwick, do hereby affirm that this is my decision in the above-captioned matter.

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Date of Decision: \_\_\_\_\_

Arbitrator's Signature  
Name

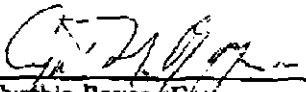
  
Cynthia Boyce, Esq.

I, Cynthia Boyce, Esq., do hereby affirm that this is my decision in the above-captioned matter.

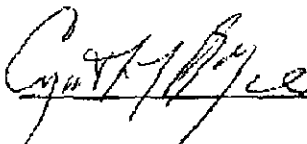
  
Cynthia Boyce

Date of Decision: \_\_\_\_\_

Arbitrator's Signature  
Name

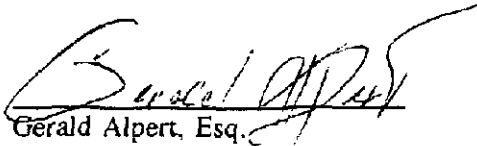
  
Cynthia Boyce, Esq.

I, Cynthia Boyce, Esq., do hereby affirm that this is my decision in the above-captioned matter.

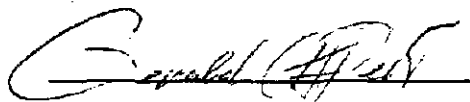
  
Cynthia Boyce

Date of Decision: June 6, 1996

Arbitrator's Signature  
Name

  
Gerald Alpert, Esq.

I, Gerald Alpert, Esq., do hereby affirm that this is my decision in the above-captioned matter.




Date of Decision: June 6, 1996

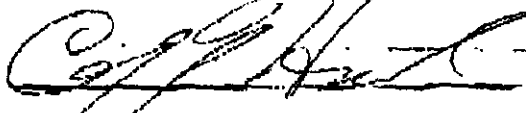


Arbitrator's Signature

Name

  
Clifford Harwick

I, Clifford Harwick, do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: June 6, 1996