

07/1/96

NASD REGULATION AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Mary Vasilakou

95-03366

Name of Respondents

Manny Feit  
Kenneth Marsh  
Marsh, Block & Co.  
Alfred Block

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**REPRESENTATION**

For claimant Mary Vasilakou ("claimant") appeared Joan M. Markey, Esq., with law offices located in New York, New York.

Respondents Marsh Block & Co., Inc. ("Marsh Block"), Kenneth L. Marsh ("Marsh") and Alfred Block ("Block") were represented by Ronald C. Minkoff, Esq., of the firm Beldock Levine & Hoffman LLP located in New York, New York.

Respondent Manny Feit ("Feit") did not enter an appearance in this matter.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on June 27, 1995. Claimant's Submission Agreements were signed on June 26, 1995 and June 21, 1996. Claimant's Amended Statement of Claim was filed on July 1, 1996.

Joint Statement of Answer was filed by Marsh Block and Marsh on August 18, 1995. Marsh Block's Submission Agreement was signed on August 17, 1995. Marsh's Submission Agreement was signed on August 17, 1995.

Respondent Feit did not file a Statement of Answer or a properly executed Submission Agreement.

Respondent Block did not file a Statement of Answer or a properly executed Submission Agreement.

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### **HEARING INFORMATION**

Pre-Hearing Conference: April 23, 1996 - One Arbitrator  
Hearing Date/Sessions: September 10, 1997 - Two Sessions

The pre-hearing conference was conducted telephonically. The hearing was held at the offices of NASD Regulation, Inc. located in New York, New York.

### **CASE SUMMARY**

Claimant alleged that Feit made unsuitable investments and unauthorized trades in her account at Marsh Block. Claimant also alleged that Feit's activities constituted breach of contract, breach of fiduciary duty, and fraud under both the common law and federal securities laws. Claimant further alleged that Marsh Block did not act in good faith, that Marsh failed to supervise Feit, and that, upon information and belief, Marsh actively participated in the wrongdoing. Claimant also asserted that Block is liable for the misconduct of Feit and Marsh.

Marsh Block and Marsh generally denied all of the allegations of the Statement of Claim. Marsh Block and Marsh maintained that claimant failed to state a claim for which relief may be granted. Marsh Block and Marsh also maintained that claimant materially breached the terms of the written contractual agreement governing the terms of her securities account by failing to bring her claim or contention to the attention of respondents within the time required by the contract.

### **RELIEF REQUESTED**

Claimant requested actual damages in the approximate amount of \$40,000.00, plus nine percent interest, punitive damages, attorneys' fees and the costs of this arbitration.

Respondents Marsh Block and Marsh requested that this arbitration be dismissed, with prejudice, costs, attorneys' fees, and such other and further relief as the nature of the cause requires.

### **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.

On July 14, 1997, respondent Alfred Block filed a petition for bankruptcy under Chapter 7 of the Bankruptcy Code, and, accordingly, all claims against Alfred Block were stayed.

At the hearing, Claimant informed the panel that she entered into a settlement agreement with Marsh Block and Kenneth Marsh. Therefore, no representative appeared at the hearing on behalf of these respondents.

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The panel made the following determinations concerning respondent Manny Feit, who did not file a Statement of Answer and a Submission Agreement and who failed to appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The arbitrators found that Feit was a person associated with a member of the NASD at the time this controversy arose, therefore, the arbitrators found personal jurisdiction over Feit pursuant to Rule 10301 of the Code.
3. The panel found that Feit was required to file a Statement of Answer and a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Feit pursuant to Rule 10314(a) of the Code.
4. In accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation, Inc. provided Feit with due notice of the hearing by regular and certified mail. The panel further determined to proceed with the hearing without Feit, whose absence was unexcused.

#### **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. Respondent Feit be and hereby is liable and shall pay claimant the sum of \$34,011.07 plus interest of 9% from the date of the award until payment, less any amounts paid to claimant by the other named respondents in settlement of this claim.
2. Claimant's request for punitive damages is hereby denied.
3. Each party shall bear their respective costs, including attorneys' fees, except that Marsh Block, Marsh and Feit are jointly and severally liable and shall pay claimant \$400.00 to reimburse claimant for the hearing session deposit previously paid to NASD Regulation, Inc.
4. All other requests for relief are hereby denied.

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**FORUM FEES**

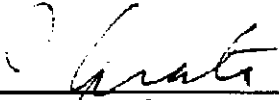
Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. will retain the \$120.00 non-refundable filing fee paid by claimant and have assessed the following forum fees:

1 pre-hearing conference x \$300.00	= \$ 300.00
2 hearing sessions x \$400.00	= <u>\$ 800.00</u>
Total forum fees	= \$1,100.00

Respondents Marsh Block, Marsh, and Feit be and hereby are jointly and severally liable and shall pay the sum of \$1,100.00, representing the total amount of forum fees assessed. Claimant previously deposited \$400.00 with NASD Regulation, Inc., and, therefore, respondents Marsh Block, Marsh, and Feit shall pay the balance of \$700.00 to NASD Regulation, Inc. and shall pay claimant \$400.00 as provided in the "Award" section above.

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Arbitrators' Signatures

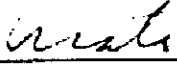
  
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Joseph J. Arata, Esq.  
Chairperson-Public Arbitrator

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Bennett A. Hall  
Public Arbitrator

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William E. O'Mara  
Industry Arbitrator


Date of decision: December 16, 1997

I, **Joseph J. Arata, 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.

  
\_\_\_\_\_  
Joseph J. Arata, Esq.

Arbitrators' Signatures


\_\_\_\_\_  
Joseph J. Arata, Esq.  
Chairperson-Public Arbitrator

  
\_\_\_\_\_  
Bennett A. Hall  
Public Arbitrator

\_\_\_\_\_  
William E. O'Mara  
Industry Arbitrator

Date of decision: December 16, 1997

I, **Bennett A. Hall**, 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.

  
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Bennett A. Hall

Arbitrators' Signatures

\_\_\_\_\_  
Joseph J. Arata, Esq.  
Chairperson-Public Arbitrator

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Bennett A. Hall  
Public Arbitrator

William E. O'Mara  
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William E. O'Mara  
Industry Arbitrator

Date of decision: December 16, 1997

I, **William E. O'Mara**, 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.

William E. O'Mara  
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William E. O'Mara