

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Esther Williams

95-03875

Name of Respondents

Schroder Wertheim & Co. Inc.
RAS Securities Corporation
Robert A. Schneider
Steven Guzofsky

REPRESENTATION

For claimant Esther Williams ("claimant") appeared Daniel H. Weiner, Esq., of the law firm of Hughes Hubbard & Reed LLP, located in New York, New York, and Alan S. Hock, Esq., of the law firm of Moritt, Hock & Hamroff, LLP, located in Garden City, New York.

For respondents RAS Securities Corp. ("RAS") and Robert A. Schneider ("Schneider") appeared Richard M. Zuckerman, Esq., of the law firm of Rubin Baum Levin Constant & Friedman, located in New York, New York, and Sheldon Gopstein, Esq., a sole practitioner, located in New York, New York.

For respondent Wertheim Schroder Co., Incorporated ("Schroder") appeared Dennis C. Cronin, Esq., of Schroder, located in New York, New York. Schroder was dismissed from this proceeding prior to the hearing.

Respondent Steven Guzofsky a/k/a Jerrey Guzofsky ("Guzofsky") did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: August 9, 1995.

Claimant's Submission Agreement signed on: July 28, 1995.

Statement of Answer filed by Respondents RAS and Schneider on: October 18, 1995.

Respondent, RAS's Submission Agreement signed on: October 18, 1995.

Respondent, Schneider's Submission Agreement signed on: October 18, 1995.

Respondent Guzofsky did not file a Statement of Answer or execute a Uniform Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conferences:	July 23, 1996	-	1 Session
	December 18, 1996	-	1 Session
	January 29, 1997	-	1 Session
	February 6, 1997	-	1 Session
Hearing Dates/Sessions:	June 3, 1997	-	2 Sessions
	June 4, 1997	-	2 Sessions
	June 19, 1997	-	2 Sessions
	July 22, 1997	-	2 Sessions
	July 24, 1997	-	1 Session/Deliberations

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

CASE SUMMARY

Claimant, a New York resident, alleged that unauthorized trading occurred in her account at RAS in January 1995. Claimant alleged that she transferred her account to RAS in the fall of 1994 when Guzofsky, who had been her broker since July 1993 at two other brokerage firms, became affiliated with RAS. Claimant alleged that, between December 30, 1994 and January 17, 1995, Respondents fraudulently attributed to her account eleven trades of calls of the Standard & Poor's 100 Index which actually represented trades of another RAS customer. Claimant alleged that while her husband, acting on her behalf, had authorized trading options in her account, her husband had not consented to the eleven trades at issue.

Claimant asserted that Guzofsky, the RAS broker for her account, informed her and her husband in early February 1995 that the trades in question, all calls on the Standard & Poor's 100 Index, were in fact unauthorized and wrongfully attributed to claimant's account by RAS. Claimant asserted that Mr. Guzofsky's representations occurred in February and March 1995, and are preserved in a written affirmation and on audiotape. Claimant further asserted that Guzofsky was not registered to sell securities in New York State or to New York residents in January 1995.

Claimant further asserted that Fredrick Schulman, a representative of RAS acting on its behalf, expressly represented claimant's husband and to another officer of RAS, James Coleman, that the trades at issue were unauthorized and wrongfully attributed to claimant's account by RAS. Claimant asserted that Mr. Schulman's representations occurred in March 1995 and are preserved on audiotape.

Claimant further asserted that Schneider, the Chairman and Chief Executive Officer of RAS, informed another officer of RAS, Eric Bashford, that the trades at issue were unauthorized and wrongfully attributed to claimant's account by RAS. Claimant further asserted that Schneider exercised supervisory control over RAS and Guzofsky, and was responsible for their actions with regard to claimant's account.

Claimant alleged that the actions of RAS and Schneider constituted violations of Sections 10(b) and 15(c) of the Securities Exchange Act of 1934, civil RICO, and applicable NASD rules and regulations, and constituted common law fraud, breach of fiduciary duty, conversion, breach of contract, and negligence.

Respondents maintained that (a) no trades were improperly attributed to Claimant's account, (b) all of the trades at issue were duly made in Claimant's account, and (c) the trades at issue were not the trades of another RAS customer. Respondents further maintained that (a) each of the trades at issue was documented when the trade was made by a trading ticket bearing Claimant's name and account number, (b) each trade was confirmed in a confirmation slip mailed to Claimant overnight by Wertheim as clearing broker, and (c) each trade was reflected in the monthly statements issued by Wertheim, as clearing broker.

Respondents further contended that the trades at issue were consistent in both magnitude and nature with hundreds of other trades of puts and calls of the Standard & Poor's 100 Index which Claimant had made in her account over the preceding ten months, first at First Hanover Securities, and then at RAS.

Respondents also maintained that the overwhelming evidence demonstrated that the trades were authorized by Claimant, including evidence that (a) the trades at issue were consistent in magnitude and nature with other trades, (b) there is nothing to differentiate the trades at issue from hundreds of other similar trades in the account about which Claimant has made no complaint, (c) the positions created by the trades at issue remained open in Claimant's account for as long as two weeks, and (d) during that two week time period Claimant's husband, Jerry Williams, who acted on Claimant's behalf, had conversations with Guzofsky every market day, during which he reviewed the positions in the account and authorized numerous trades.

RELIEF REQUESTED

Claimant requested compensatory damages of \$700,000, plus interest from January 1995. Claimant requested that these damages be trebled pursuant to 18 U.S.C. §1964(c) (civil RICO), and further requested \$1,000,000 in punitive damages, and costs and expenses incurred by her, including reasonable attorneys' fees.

Respondents RAS and Mr. Schneider requested that all claims be dismissed. Respondents have not submitted the issue of attorneys' fees to arbitration, and therefore make no claim for attorneys' fees. Respondents seek an award of costs (other than attorneys' 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 NASD Regulation, Inc.

Claims against Respondent Wertheim Schroder & Co., Incorporated ("Wertheim") were dismissed prior to the hearing.

FINDINGS OF FACT

1. RAS and Schneider hired Guzofsky knowing he was using his brother's name and social security number, and knowing that he had previously had problems with controlling his gambling, and, generally, knowing of his checkered past.

2. Although RAS and Schneider asserted at the hearing that the NASD knew and approved of Guzofsky's use of his brother's name and social security number, no corroborating evidence thereof was proffered at the hearing, and the panel therefore finds that such assertions were not established.

3. RAS and Schneider placed Guzofsky in a position of trust and responsibility, but failed to ensure that his activities were well supervised, well monitored and well controlled.
4. Supervisory and compliance procedures within RAS were ineffective regarding oversight of Guzofsky and his activities. For example,
 - a. At some point in Guzofsky's employment at RAS, intermediate supervisory and compliance personnel were removed by direct action of Schneider, such that Guzofsky was supervised directly by Schneider and not directly by RAS' compliance officer.
 - b. RAS failed to follow industry standards to ensure that the heavy speculative trading in the Williams account was in fact authorized by Williams by, for example, issuing "activity letters" to Williams or personally contacting Williams.
 - c. RAS' procedures with respect to trade tickets and record keeping were poor or non-existent.
5. RAS did not have written discretionary authority over the Williams account. The trades questioned by Williams were not authorized by Williams. Furthermore, RAS failed to establish that such trades were made by Guzofsky with Williams' express or implied authority.

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. Claimant is awarded \$405,000 jointly and severally against RAS and Schneider in respect of the questioned trades.
2. Claimant is awarded \$159,000 jointly and severally against RAS and Schneider in respect of Claimant's request for attorneys fees and costs.
3. Claimant is awarded \$123,000 against Guzofsky in respect of the questioned trades and in respect of Claimant's request for attorneys fees and costs.
4. Claimant's request for an award of punitive damages is denied.
5. All other claims for relief are denied.
6. All forum fees and NASD costs are assessed against RAS, Schneider and Guzofsky jointly and severally.

OTHER COSTS

The arbitrator honorariums applicable in this matter pursuant to Rule 10334 of the Code of Arbitration

Procedure and the agreement of the parties is as follows:

\$500.00 per hearing date for the Chair
\$400.00 per hearing date for each co-panelist.

As noted under Hearing Dates/Sessions above, there were nine hearing dates in this matter. The full panel was present for seven of the hearing dates (two prehearing conferences; four days of hearing; one day of deliberations.) The Chair only was present at two of the hearing dates (two prehearing conferences.) **The total amount due NASD Regulation, Inc. for arbitrator honorariums is \$10,100.** Pursuant to the ruling of the arbitration panel respondents RAS, Schneider and Guzofsky are jointly and severally liable for the sum of \$10,100.00.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$300.00 non-refundable filing fee submitted by Claimant and have assessed the following Forum Fees:

Two pre-hearing sessions with the Chair at \$300.00 each = \$600.00
Two pre-hearing sessions with the full panel at \$1500.00 each = \$3000.00.
Eight hearing sessions at \$1500.00 each = \$12,000.00.
One hearing session for arbitrator deliberations at \$1500.00 = \$1500.00.

Total forum fees assessed: \$27,600.00.

Respondents RAS, Schneider and Guzofsky be and hereby are jointly and severally liable for the sum of \$27,600 representing 100% of the forum fees assessed. Respondents RAS, Schneider and Guzofsky are jointly and severally liable for the sum of \$10,100.00 representing 100% of the arbitrator honorariums assessed. **The total amount owed by Respondents RAS, Schneider and Guzofsky in forum fees and arbitrator honorariums is \$37,700.00.**

Claimant has deposited the sum of \$10,250.00 in hearing session and arbitrator fees with NASD Regulation, Inc. Therefore Respondents RAS, Schneider and Guzofsky jointly and severally owe claimant the sum of \$10,250.00. Claimant has deposited the sum of \$300.00 with NASD Regulation, Inc. as the non-refundable filing fee. Therefore, Respondents RAS, Schneider and Guzofsky jointly and severally owe claimant the sum of \$300.00

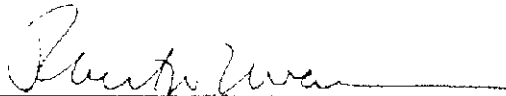
Respondents RAS, Schneider and Guzofsky jointly and severally owe and shall pay to NASD Regulation, Inc. the sum of \$27,450.00 in outstanding forum fees and arbitrator honorariums.

Respondent RAS is liable and shall pay to NASD Regulation, Inc. the sum of \$500.00 representing the Member Surcharge. Respondent RAS has already deposited the sum of \$500.00 with RAS and therefore owes nothing towards the Member Surcharge.

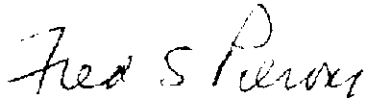
Fees are payable to NASD Regulation, Inc.

ARBITRATOR'S SIGNATURE

I, **Robert D. Owen, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above referenced matter.


Robert D. Owen, Esq.,
Chairman and Public Arbitrator

I, **Fred S. Pieroni**, do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above referenced matter.


Fred S. Pieroni
Public Arbitrator

I, **Frank G. Piazza**, do hereby affirm pursuant to Article 7507 of the Civil Practice Law & Rules that this is my decision in the above referenced matter.


Frank G. Piazza, Industry Arbitrator

Date of Decision: July 24, 1997