

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ronald D. Weisel & Audio of America, LTD

v.

Case No.
95-03974

Name of Respondents

South Richmond Securities, Inc.
Erik John Drewes
Bruce Guarino
Rickel & Associates

REPRESENTATION

For Claimants, Ronald Weisel and Audio By Design ("Claimant"), appeared David Hirschberger, Esq. of Wexler & Burkhart located in Mitchel Field, New York.

For Respondent, Eric John Drewes ("Drewes"), appeared Joseph F. Keenan, Esq. of Hochat & Keenan located in Garden City, New York.

For Respondent, Bruce Guarino, ("Guarino"), appeared Howard Eilen, Esq. of Lehman & Eilen located in Uniondale, New York.

For Respondent, Rickel & Associates ("Rickel"), appeared Vincent Sarnatora, Esq. of Rickel & Associates located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on August 15, 1995.

Claimant's Submission Agreement was signed on July 31, 1995.

Statement of Answer filed by Respondent Drewes was filed on November 8, 1995. Respondent Drewes' Submission Agreement was signed on November 2, 1995.

Statement of Answer filed by Respondent Guarino was filed on November 1, 1995. Respondent Guarino's Submission Agreement was signed on December 7, 1995.

Statement of Answer filed by Respondent Rickel & Associates was filed on September 15, 1995. Respondent Rickel & Associates' Submission Agreement was signed on September 27, 1995.

HEARING INFORMATION

Hearing Dates/Sessions:

August 1, 1996 - 2 Sessions

Hearing Location: NASD, Inc. office located at 33 Whitehall Street, New York, New York.

CASE SUMMARY

Claimant Weisel, the sole shareholder of Claimant Audio by Design, alleged he met Respondent Drewes in 1991 and they developed a personal relationship. In or about November 1993 Claimants opened accounts at South Richmond. Claimant Weisel stated he had no previous experience in investing and further stated that at the time the accounts were opened, his primary source of income was disability pay from an accident. Claimant Weisel claimed that he told Respondents Drewes and Guarino that he did not want to risk the principal in either account. Claimant Weisel maintained that during the period December 1993 through July 1994 he invested \$35,020.00 in his individual account and \$78,820.00 in Audio by Design's account based on the recommendations of Drewes. Claimant argued respondent Drewes assured him he would safeguard the investments and Claimant stated he kept Drewes informed of his plans or the invested funds. Claimant contended that with each recommendation, Drewes made projections regarding profitability and at no time advised him of the high risk involved. Claimant further contended that South Richmond was the major market maker for each security Claimants purchased and that the stocks' value was dependent on the buying support of South Richmond.

Claimant contended that in December 1994 Drewes advised Claimants that some of their investments had temporarily dropped and advised them to hold their positions. Claimants further contended that Drewes advised them that at the time Rickel took over the accounts the stock value would temporarily drop.

In February 1995 Drewes left Rickel and asked Claimants to sell their positions and purchase new stocks so they could recoup their losses. Weisel declined Drewes' suggestion.

Respondent defended Drewes and stated that Claimant Weisel was an experienced and sophisticated investor and was a financial planner before he formed Audio by Design. Drewes argued that Claimant held most of positions long term and that his earliest trades resulted in profits. Drewes further argued he didn't misrepresent the risks or the future performance of the stock. Drewes maintained that the losses in the account were a result of market conditions and not his conduct.

Respondent Guarino maintained he did not breach any fiduciary duty owed to Claimants or that he was negligent in confection with Claimants' accounts. Guarino stated he was not their broker or account executive. Guarino further stated he never discussed any investment with Claimants and that Claimants never complained to him. Guarino raised the following affirmative defenses: assumption of risk, estoppel, ratification, good faith, and statute of limitations.

Respondent Rickel stated they purchased only the assets and not the liabilities of South Richmond Securities, Inc. and that they are not its successor in interest. Rickel argued that the events complained of took place before Rickel's purchase of South Richmond.

RELIEF REQUESTED

Claimants requested \$78,034.50 in compensatory damages, interest, costs, and attorneys' fees.

Respondent Drewes requested the Statement of Claim be dismissed and all costs assessed against Claimant.

Respondent Guarino requested Statement of Claim be dismissed, all costs be assessed against Claimant

and other and further relief deemed appropriate.

Respondent Rickel requested it be dismissed from arbitration.

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.

By letter dated July 22, 1996 the Claimants informed the NASD that they had withdrawn their claims against Respondent Rickel & Associates and by letter dated July 30, 1996 they informed the NASD that they had withdrawn their claims against Respondent Bruce Guarino.

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. All claims by Claimants against Respondents be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs.
3. All other claims are dismissed in their entirety.

FORUM FEES


Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined the NASD shall retain the \$150.00 non-refundable filing fee paid by Claimant and have assessed the following forum fees.

Hearing Session Deposit: (2 session x \$500.00)	\$ 1000.00
less claimants' hearing session deposit	\$ 500.00
 Total Outstanding Forum Fees	 \$ 500.00

The arbitrators have determined that Claimant shall be liable for the total cost of arbitration. Therefore Claimant is hereby liable and shall pay to the NASD the sum of \$500.00 which represents outstanding forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS' SIGNATURES


Joseph B. Russell, Esq.-Public Chairperson

Robina Fedora Asti

Allen Kilik, Esq.

Date of Decision: October 24, 1996

AFFIRMATION

I, Joseph B. Russell, 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 B. Russell, Esq.

I, Robina Fedora Asti, 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.

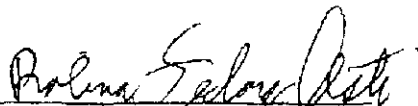
Robina Fedora Asti

I, Allen Kilik, 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.

Allen Kilik, Esq.

ARBITRATORS' SIGNATURES

Joseph B. Russell, Esq.-Public Chairperson


Robina Fedora Asti

Allen Kilik, Esq.

Date of Decision: October 24, 1996

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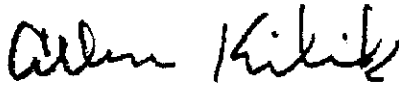
I, Allen Kilik, Esq. do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Allen Kilik, Esq.

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Robina Fedora Asti



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I, Allen Kilik, 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.



Allen Kilik, Esq.