

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Herbert R. Spangler and Lura A. Spangler

95-04354

Name of Respondents

Scott A. Pinkowitz  
RAS Securities Corp.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 12, 1995, Claimants Herbert R. Spangler and Lura A. Spangler ("Claimants"), alleged that they held account #W51-3011528 with Respondent RAS Securities Corp. ("RAS") and their account executive Respondent Scott Pinkowitz ("Pinkowitz"), recommended that they purchase shares of the Trust Company of New Jersey ("TCNJ"). Claimants further alleged that they followed his advice and purchased 500 shares for \$7,017.50. Claimants contended that in addition to the above, Pinkowitz made several unauthorized transactions in their account such as selling their shares of TCNJ, purchasing 5,000 shares of Enviro Green Tech, Inc. ("EGTI") and selling 3,400 shares of EGTI. Claimants further contended that upon discovery, they contacted RAS but were told it was their problem for not alerting it sooner. Claimants alleged that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondent RAS Securities Corp., maintained that Claimants opened their account in February of 1995 and purchased 500 shares of TCNJ. Respondent further maintained that on March 23, 1995, Claimants sold their shares of TCNJ and simultaneously purchased 5,000 shares of EGTI. Respondent contended that these three trades were specifically authorized by Claimants and that they received confirmations for each. Respondent further contended that when Claimants failed to pay the difference between their sale and purchase, they were required by law to sell 3,400 shares of EGTI to cover the insufficient funds in the account. Respondent maintained that Claimants did not dispute any of the trades until several months later and that as a result of the above, it should not be held liable.

Respondent Scott A. Pinkowitz failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimants Herbert R. Spangler and Lura A. Spangler, requested \$7,017.50 in actual damages, plus other costs.

Respondent RAS Securities Corp., requested that the claims of the Claimants be dismissed.

Respondent Scott A. Pinkowitz failed to file an Answer to the Statement of Claim.

#### **OTHER ISSUES CONSIDERED & DECIDED**

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Scott A. Pinkowitz, was served by regular mail and given an opportunity to respond, which he failed to do. In addition, an overdue answer notice was sent to the Respondent by certified mail and was received as evidenced by the signed return card on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Scott A. Pinkowitz, has notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

#### **AWARD**

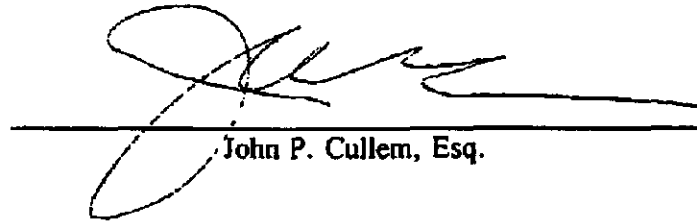
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John P. Cullem, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Herbert R. Spangler and Lura A. Spangler, on September 8, 1995, and by the Respondent RAS Securities Corp., on October 24, 1995, but not by the Respondent Scott A. Pinkowitz, as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents RAS Securities Corp., and Scott A. Pinkowitz, are jointly and severally liable and shall pay to the Claimants Herbert R. Spangler and Lura A. Spangler, \$4,912.25 in actual damages.
2. Respondents RAS Securities Corp., and Scott A. Pinkowitz, are jointly and severally liable and shall pay to the Claimants Herbert R. Spangler and Lura A. Spangler, simple interest at the rate of 8% per annum from March 30, 1995 until the date of payment of the award.
3. The Claimants Herbert R. Spangler and Lura A. Spangler, shall surrender to Respondents RAS Securities Corp. and Scott A. Pinkowitz any shares of the March 23, 1995 Enviro Green Tech. Inc. stock purchase currently owned.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Herbert R. Spangler and Lura A. Spangler, shall be retained by the NASD, Inc. Respondents RAS Securities Corp., and Scott A. Pinkowitz, are jointly and severally liable and shall pay to the Claimants Herbert R. Spangler and Lura A. Spangler, \$150.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **JOHN P. CULLEM, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



John P. Cullem, Esq.

**DATE OF DECISION: March 25, 1996**