

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Ilya and Irina Boguslavsky

95-04957

Name of Respondents

Rickel & Associates, Inc.
Andreas Zigouras
Dmitry Aranovich
Joseph Fedorko
John C. Kawas, Jr.

REPRESENTATION

For Claimants, Ilya and Irina Boguslavsky, appeared Ilya Boguslavsky. (pro se)

For Respondent, Rickel & Associates, Inc., appeared Vincent P. Sarnatora, Esq., Vice President and Director of Compliance of Rickel & Associates, Inc., New York, New York.

For Respondent, Andreas Zigouras, appeared Constantine Papas, Esq., from the law firm of Snow, Becker & Krauss, New York.

Respondent, Dmitry Aranovich appeared pro se.

Respondent, Joseph Fedorko appeared pro se.

For Respondent, John C. Kawas, Jr., appeared Charles O'Rourke, Esq., sole practitioner, Garden City, New York.

CASE INFORMATION

Statement of Claim filed on: October 19, 1995

Claimants' Submission Agreement signed on: September 25, 1995

Statement of Answer filed by Respondent, Rickel & Associates, Inc. on: November 22, 1995

Respondent, Rickel & Associates' Submission Agreement signed on: November 22, 1995

Statement of Answer and Motion to Dismiss filed by Respondent, Andreas Zigouras, on: January 15, 1995

Respondent, Andreas Zigouras's Submission Agreement signed on: January 15, 1996

Statement of Answer filed by Respondent, Dmitry Aranovich, on: December 12, 1995

Respondent, Dmitry Aranovich's Submission Agreement signed on: December 4, 1995

Statement of Answer filed by Respondent, Joseph Fedorko, on: December 12, 1995

Respondent, Joseph Fedorko's Submission Agreement signed on: November 27, 1995

Statement of Answer and Motion to Dismiss filed by Respondent, John C. Kawas, on: December 13, 1995

Respondent, John C. Kawas, did not execute a Submission Agreement as required by Rule 10314(b) [formerly Section 25(b)] of the Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference: August 13, 1996 (1 Session)
Hearing Date/Sessions: September 13, 1996 (3 Sessions)

Hearing Location: Marriott Financial Center Hotel
New York, New York

CASE SUMMARY

Claimants alleged that on October 21, 1994, Respondent, Dmitry Aranovich ("Aranovich"), of South Richmond Securities, Inc. ("SRSI") opened an account in the names of Ilya and Irina Boguslavsky ("Mr. and Mrs. Boguslavsky," respectively) and purchased 200 shares of CPI Aerostructures ("CPIA") without Claimants' prior approval. Claimants alleged that they were charged a mark-up that was three times higher than Aranovich had offered Mr. Boguslavsky via telephone on October 20, 1994, and that fact that SRSI made a market in CPIA was never disclosed. In addition, Claimants alleged that Mrs. Boguslavsky never agreed to open the account in her name.

Claimant alleged that on or about October 24, 1994, Mr. Boguslavsky received a "new account kit" from SRSI, including a letter from the compliance department setting forth the requirements to open an account with SRSI. Claimants alleged that none of the forms required by the compliance department to open an account were ever signed by either Claimant. In addition, Claimants alleged that during Mr. Boguslavsky's October 20, 1994, telephone conversation with Aranovich, Mr. Boguslavsky stated that his investment objective was "long term growth;" however, when Claimants received that new account form both "speculation" and "long term growth" had been checked.

Claimants alleged that Mr. Boguslavsky believed that Claimants' money was not at risk until the terms of the account were put in writing and once all the proper documents had been signed; otherwise, he would not have deposited the Claimants' money into the account.

Claimants alleged that they had never invested in stocks before, and that SRSI's services were offered as a good introduction into the stock market with stock selection "based on comprehensive market research." Claimants alleged that instead, the purchases made in the account were exclusively, stocks that SRSI made a market in. Claimant further alleged that two of the securities that were purchased for the account, Telmed, Inc. ("TEMD") and Diplomat Corp. warrants ("DIPLW"), were also underwritten by SRSI; a fact that was not disclosed to Claimants.

Claimants alleged that after Mr. Boguslavsky discovered that SRSI was a market maker in CPIA and TEMD he phoned Mr. Aranovich and stated that he thought the purchases were a bad idea. Claimant

alleged that although he spoke to Mr. Aranovich about the purchases, additional stock, in which SRSI was a market maker, were purchased for Claimants account.

Claimants alleged that DIPLW was recommended as a "safe and solid security," however, the confirmation omitted the fact that SRSI was a market maker in the stock. Claimant alleged that this failure and SRSI failure to disclose that SRSI had underwritten DIPLW violated Rule 10(b)-5 of the Securities and Exchange Act. Claimants further alleged that SRSI violated Rule 10(b)-10 of the Securities Exchange Act and NASD regulations for reporting transactions in Small-cap securities.

Claimants alleged that after the purchase of SRSI by Respondent, Rickel & Associates, Inc. ("Rickel") they were never informed of Rickel's intention to carry the their account; never asked Rickel to carry the account or authorized them to do so; and were not timely notified after the acquisition took place. Claimant further alleged that Rickel maintained the account despite the fact the conditions for opening an account were never met.

Claimants alleged that Rickel is responsible for the fraudulent transaction in DIPLW. Claimants alleged that under Rule 10(b)-10 it is unlawful to settle a transaction before a written confirmation is sent to the customer. Claimants alleged that Rickel acquired the account before the transaction in DIPLW was complete and that the check covering the transaction was deposited on December 29, 1994. Claimants further alleged that since they were not informed about the takeover of SRSI by Rickel they were, denied the opportunity to back out of the transaction before the settlement date. Claimants alleged that the account statement they received in January 1995, which reflected the status of the account up to December 30, 1994, indicated that the account was still under the control of SRSI and; therefore, he had no knowledge that Rickel acquired SRSI. Claimants alleged that they were not informed of the takeover, which was accidentally discovered by Mr. Boguslavsky on January 12, 1995. Claimants further alleged that the letter from Rickel was not received until the latter part of January 1995.

Claimants alleged that on January 12, 1995, Aranovich told Mr. Boguslavsky that SRSI was a market maker in DIPLW, but that the transaction could not be voided since neither he, nor Rickel, was associated with SRSI. Claimant alleged that Aranovich then recommended an additional purchase of CPIA and offered a price of 4 3/16, which was substantially higher than the market-price. Claimants alleged this recommendation was made through Rickel even though Claimants indicated their unwillingness to do business with Rickel, and was not even notified about the terms on which Rickel acquired the account. Claimants alleged that Mr. Boguslavsky clearly stated that he did not want stocks in the account that SRSI made a market in.

Claimants alleged that Mr. Boguslavsky attempted to contact Respondent, Joseph Fedorko ("Fedorko"), Aranovich's immediate supervisor, to request an explanation of Aranovich's actions; however, his two calls of February 2, 1995 were not returned.

Finally, Claimants alleged that the pre-dispute arbitration clause presented to the Claimants in SRSI customer agreement was in violation of NASD Rule of Fair Practice.

Respondent Rickel maintained that on December 27, 1994, they purchased some of the assets of SRSI, not the liabilities, and is not the successor in interest to SRSI. In addition, Rickel maintained that the allegations against Aranovich all took place prior to the asset purchase.

Rickel maintained that a letter was forwarded to all SRSI clients announcing the asset purchase of SRSI. Respondent maintained that the clients were advised that if they choose not to continue a relationship with Rickel, they were to instruct Rickel with the proper documentation. Rickel maintained that no ACAT forms were received from the Claimants, so the Claimants SRSI account was converted to a Rickel account; however, no transactions took place in the Claimants account while maintained by Rickel.

Rickel maintained that on February 27, 1995, Adler Coleman Clearing Corp ("Adler"), Rickel's clearing agent at the time, declared bankruptcy. Rickel maintained that SIPC appointed a trustee to oversee the liquidation, over which Rickel had no control, that resulted in J.B. Oxford & Co.'s purchase of Adler. Rickel maintained that although Rickel's name appears on the J.B. Oxford's March 1995 monthly statement as account executive, Rickel never entered into a clearing relationship with J.B. Oxford, since Rickel had entered into a clearing agreement with Oppenheimer & Co.

Rickel maintained that on March 23, 1995, a letter was sent to all Rickel clients advising them of the status of their accounts and the procedures to follow should they wish to continue doing business with Rickel.

Rickel maintained that Rule 10(b)-10 states that it is unlawful for a broker dealer to affect a transaction unless such broker dealer, at or before completion of such transaction, gives or sends to such customer written notification (T+1). Rickel maintained therefore, that the confirmation for the purchase of the 2000 Diplomat warrants on December 22, 1994, would have to have been sent by December 23, 1994; four days prior to Rickel's purchase of SRSI.

Rickel maintained that the DIPLW transaction was a bona fide transaction, which Claimants never disputed and, therefore payment, according to Regulation T, was due on or before December 30, 1994. The purchase of SRSI assets by Rickel did not entitle clients to arbitrarily cancel transactions.

Respondent Aranovich maintained that on October 3, 1994, Mr. Boguslavsky was contacted by Boris Gutman, a registered representative with SRSI, and was qualified as an aggressive investor who had some experience in the market. Aranovich maintained that he contacted Mr. Boguslavsky on October 21, 1994, and had a long conversation with him before he opened a joint account with his wife. Aranovich maintained that Mr. Boguslavsky's investment objectives were "long term growth" and "speculation."

Aranovich maintained that he introduced Mr. Boguslavsky to CPIA and that Mr. Boguslavsky agreed to buy 200 shares at 6 13/16 with a mark-up of 3/16. Aranovich maintained that he explained to Mr. Boguslavsky that SRSI was a market maker in CPIA and later this fact was disclosed again on the sales confirmation set to Claimants. Aranovich maintained that when the price for CPIA went up, Mr. Boguslavsky agreed to invest more money and build a portfolio. Aranovich maintained that Mr. Boguslavsky did not have any problems until the stock declined in value.

Aranovich maintained that after Rickel took over SRSI many brokers began to leave and SRSI's stocks became volatile. Aranovich maintained that Mr. Boguslavsky called him on January 11, 1995 and stated that the company should take responsibility for his loss on CPIA. Aranovich maintained that he tried to explain the reason for the losses in his portfolio, however, Mr. Boguslavsky demanded a refund. Aranovich maintained that Mr. Boguslavsky also called Rickel's compliance department demanding a refund of his money.

Respondent Fedorko maintained that on October 21, 1994, he approved a new account for Claimants and that the acting broker for the account was Aranovich. Fedorko maintained the effective transaction was the purchase of 2000 shares of CPIA at 6 13/16 and that he approved the purchase as suitable for the Claimants based on the information provided on the new account form. Fedorko alleged that all the brokers who worked for him, are to confirm the order with their customers and give the customer their new account numbers. Fedorko maintained that Mr. Boguslavsky mailed a check for the purchase confirming his order of 200 shares of CPIA. Fedorko maintained that during the next four months he never heard or received anything concerning Claimants' claim against Aranovich.

Respondent Zigouras denied all allegations of wrongdoing alleged in the Statement of Claim (the "Claim"). Zigouras maintained that the Claim does not alleged one allegation of wrongdoing attributable to him and that the only reference to him in the Claim is where it states that Zigouras was the

"supervising sales manager and acting President of SRSI." Zigouras maintained that he was a supervising sale manager, but was not the supervising sales manager for Aranovich. Further, Zigouras maintained that he never held the title of "acting President of SRSI." In addition, Zigouras maintained that he was terminated from SRSI on December 21, 1994, one day before the last complained of transaction took place. According, Zigouras maintained that he could not be held liable for transaction that occurred after his termination.

Respondent, John Kawas ("Kawas"), maintained that he joined SRSI on November 18, 1994, almost a month after the Claimants opened their account with SRSI and made the transactions complained of. Kawas alleged that he was not the Compliance director of SRSI at the time the account was opened, nor did he have anything to do with the Claimants, their account or the disputed transaction. Kawas maintained that he was terminated by SRSI on December 19, 1994, when he was told that his services were no longer needed because SRSI was being sold.

RELIEF REQUESTED

Claimants requested \$13,023.75 in actual damages and \$13,023.75 in punitive damages.

Respondent Rickel & Associates, Inc., requested that all claims be denied in their entirety.

Respondent, Dmitry Aranovich, requested that all claims be dismissed.

Respondent, Andreas Zigouras, requested that all claims be dismissed in their entirety.

Respondent, Joseph Fedorko, requested that all claims be dismissed.

Respondent, John Kawas, requested that all claims be dismissed and that costs and expenses, including reasonable attorney's fees be assessed against the Claimants.

OTHER ISSUES CONSIDERED & DECIDED

1. By letter dated September 11, 1996, from Ilya Boguslavsky, the Claimants informed the NASD that Respondent, John Kawas, was dismissed from this arbitration.
2. 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. Respondent, Dmitry Aranovich, is liable and shall pay to the Claimant's the sum of \$2190.13;
2. Respondent, Joseph Fedorko, is liable and shall pay to the Claimant's the sum of \$625.75;
3. Respondent, Andreas Zigouras, is liable and shall pay to the Claimant's the sum of \$312.88;
4. All claims asserted against Rickel & Associates, Inc., by Claimant are dismissed in their entirety;

5. All parties are to bear their respective cost, including attorneys' fees; and,
6. All other requests for relief are denied.

DISSENT

Arbitrator, David M. Kaplan, while concurring in the above award, dissent to the extent that he would have included the following in the decision:

1. An award to Claimants of \$10,000.00 in punitive damages for the egregious acts and conduct of the Respondents.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Pre-Hearing Conference Fees:	\$ 300.00	(1 Session x \$300.00)
Hearing Session Fees:	\$1200.00	(3 Sessions x \$400.00)
Total Forum Fees:	\$1500.00	

1. Respondent, Dmitry Aranovich, is assessed \$1050.00 representing 70 % of the total forum fees due. Respondent, Dmitry Aranovich, is liable and shall pay to NASD Regulation, Inc., the sum of \$1050.00;
2. Respondent, Joseph Fedorko, is assessed \$300.00 representing 20 % of the total forum fees due. Respondent, Joseph Fedorko, is liable and shall pay to NASD Regulation, Inc., the sum of \$300.00;
3. Respondent, Andreas Zigouras, is assessed \$150.00 representing 10 % of the total forum fees due. Respondent, Andreas Zigouras, is liable and shall pay to NASD Regulation, Inc., the sum of \$150.00;
4. NASD Regulation, Inc., will refund the Claimant \$400.00 representing the hearing session deposit paid by the Claimants.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

Diane Getzler, Esq.

Diane Getzler, Esq.

James R. Madan

David M. Kaplan, Esq.

Concurring in part, dissenting in part.

Date of Decision: February 19, 1997

I, **Diane Getzler, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Diane Getzler, Esq.
Diane Getzler, Esq.

I, **James R. Madan**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

James R. Madan

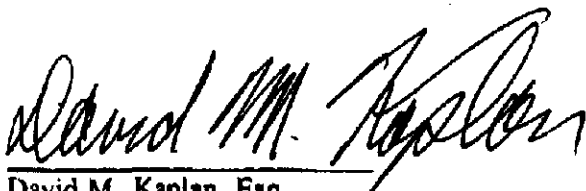
I, **David M. Kaplan, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

David M. Kaplan, Esq.

ARBITRATORS' SIGNATURES

Diane Getzler, Esq.

James R. Madan

A handwritten signature in dark ink, appearing to read "David M. Kaplan". The signature is fluid and cursive, with the first name "David" and last name "Kaplan" being more legible than the middle initial "M.". The signature is written over a horizontal line.

David M. Kaplan, Esq.
Concurring in part, dissenting in part.

Date of Decision: February 19, 1997

Arbitrator's Affirmation

Pursuant to New York Civil Practice Law and Rules §7507, the undersigned having been duly designated as Arbitrator to hear and determine the dispute between these parties, does hereby affirm under the penalties of perjury, that he personally heard and considered all of the evidence in the foregoing matter, and that he executed this Arbitration Award on the 18th day of FEBRUARY 1997 in the County of Queens, City and State of New York.


David M. Kaplan