

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Kim D. & Betty NG

95-06061

Name of Respondent(s)

Rickel & Associates, Inc.  
Richard Yu

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**REPRESENTATION**

For Claimants Kim D. and Betty NG ("Claimants") appeared Ralph A. Gant, Esq., a sole practitioner located in New York, New York.

For Respondent Rickel & Associates, Inc. ("Rickel") appeared Vincent P. Sarnatora, Senior Vice President and Director of Compliance for the firm Rickel & Associates, Inc, located in New York, New York.

For Respondent Richard Yu ("Yu") appeared Atea Martin, Esq. of the law firm of Snow Becker & Krauss, located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed on: December 26, 1995.

Claimant's Submission Agreement was signed on: January 13, 1996.

Respondent Rickel's Statement of Answer was filed on: February 7, 1996.

Respondent Rickel's Submission Agreement was signed on: February 8, 1996.

Respondent Yu's Statement of Answer was filed on: March 18, 1996.

Respondent Yu's Submission Agreement was signed on: March 18, 1996.

**HEARING INFORMATION**

Pre-Hearing Conferences:	July 15, 1996	-	1 session
	July 17, 1996	-	1 session

Hearing Dates/Sessions:	December 6, 1996	-	2 sessions
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The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

### CASE SUMMARY

Claimants alleged that in or about November 1991, Yu, a registered representative employed by South Richmond Securities, Inc. ("South Richmond") and subsequently by Rickel, called them to solicit their account. Claimants further alleged they told Yu that they did not have much experience investing and had limited knowledge of the field. Claimants contended that Yu informed them that his employer, South Richmond, had investment expertise which would enable its clients to earn substantial profits. Claimants further contended that based on Yu's representations, they opened their account at South Richmond. Claimants asserted that Yu aggressively solicited purchases of penny stocks without disclosing the precarious financial status of the companies or the extreme risks involved with these stocks. Claimants alleged that they invested in the stock of American Complex Care, Celex Bio Sciences, Leak X Env Corp. and Telmed, Inc.

Claimants asserted that South Richmond was the market maker and/or underwriter for these securities. Claimants further asserted that they were charged excessive markups and that South Richmond committed numerous securities law violations. Claimants also asserted that South Richmond, after being censured and fined \$75,000, entered its Consent to pay a Restitution Fund of \$109,994 to reimburse its clients who had been overcharged in the purchase of International Business Schools, Inc., one of the companies in which Claimants' funds had been invested. Claimants contended that the restitution fund has never been paid by South Richmond, and the company was subsequently expelled from membership in the NASD.

Claimants also contended that on December 27, 1994, respondent Rickel acquired the assets of South Richmond, which, as a matter of law, were subject to South Richmond's liabilities. Claimants alleged that after the demise of South Richmond, respondent Yu became a Registered Representative of respondent Rickel. Claimants further alleged that respondent Yu was part of South Richmond's unlawful operations for at least three years, and must have been fully aware of their fraudulent conduct.

Respondent Yu maintained that he never made a cold call to claimants. Respondent Yu further maintained that he that he spoke to Claimants before every trade, explained the risks of each trade, and obtained the Claimants approval before every trade. Respondent Yu also maintained that Claimants understood the risks of the trades they conducted with him. Respondent Yu contended that Claimants were sent confirmation statements after every transaction. Respondent further contended that Claimants have not alleged that any of the trades he performed were unsuitable.

Respondent Yu maintained that he did not conduct any trades for Claimants while employed by Rickel because Claimants never executed the necessary ACAT documentation forms to transfer the account from J.B. Oxford to Oppenheimer & Co., Rickel's clearing firm at the time.

Respondent Rickel maintained that it purchased some of the assets, not the liabilities, of South Richmond and is not the successor in interest to South Richmond. Respondent Rickel further maintained that a letter was forwarded to all customers of South Richmond, including Claimants, advising them of the asset purchase and further advising them that if they chose not to continue their relationship with Rickel, they were to instruct Rickel with the necessary documentation. Rickel contended that Claimants did not submit an ACAT form and, accordingly, their account was converted to a Rickel account. Rickel further contended that no transactions took place in Claimants' account while it was maintained at Rickel. Rickel maintained that all transactions performed by Yu took place prior to the acquisition of the account by Rickel.

### **RELIEF REQUESTED**

Claimants requested reimbursement of their losses, which are in excess of \$60,000. In addition, Claimants requested interest, arbitration costs and reasonable attorney's fees.

Respondent Yu requested that the Statement of Claim be dismissed.

Respondent Rickel requested that the Statement of Claim be dismissed.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents Rickel and Yu each made a Motion to Dismiss the Statement of Claim. The panel considered the Motions together with Claimant's opposition. By letter dated August 15, 1996 the parties were advised that Rickel's application for dismissal was granted and the action was dismissed as to Rickel with prejudice and on the merits. The parties were further advised that the application was denied as to Respondent Yu.

### **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. The claims of the Claimants be and hereby are denied.
2. Each party shall bear their respective costs, including attorney's fees.
3. All other claims be and hereby are denied.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 pre-hearing sessions @ \$300 + 2 sessions @ \$500 = \$1,600

1. Claimants be and hereby are liable for the sum of \$800, representing one-half of the forum fees assessed. Claimants previously deposited \$500 with the NASD. Therefore, \$300 is owed to the NASD by the Claimants.
2. Respondent Yu be and hereby is liable for and shall pay to the NASD the sum of \$800, representing one-half of the forum assessed.

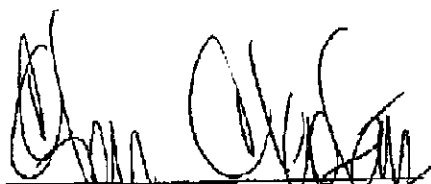
Fees are payable to the National Association of Securities Dealers, Inc.

Barry Feiden  
Barry Feiden

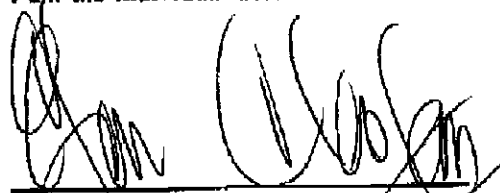
I, Barry Feiden, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Barry Feiden  
Barry Feiden

Date of decision: February 3, 1997

  
Efron Cleofe, III

I, Efron Cleofe, III, 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.

  
Efron Cleofe, III

date of decsion: Febuary 3, 1997

ARBITRATORS SIGNATURES

  
Michael H. Du Boff, Esq.

I, Michael H. Du Boff, 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.

  
Michael H. Du Boff, Esq.

DATE OF DECISION : February 3, 1997