

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

John J. Byrnes

96-00335

Name of Respondents

Irving Stitsky  
Jordan I. Shamah

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**REPRESENTATION**

Claimant John J. Byrnes ("Claimant") appeared *pro se*.

Respondents Irving Stitsky ("Stitsky") and Jordan I. Shamah ("Shamah") did not appear.

**CASE INFORMATION**

The Statement of Claim was filed January 23, 1996.

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

Stitsky's Statement of Answer was received May 9, 1997.

Stitsky did not file an executed agreement to arbitrate.

Shamah did not file and answer or an agreement to arbitrate.

**HEARING INFORMATION**

Hearing Date/Sessions: May 21, 1997/one session

Hearing Location: NASD Regulation District Office  
Philadelphia, PA

**CASE SUMMARY**

Claimant alleged, among other things, that Stitsky and Shamah (collectively "Respondents"), while employed by Stratton Oakmont, Inc., executed unauthorized trades in Claimant's account and failed to execute several sell orders communicated to Respondents, both verbally and in writing. Claimant alleged that Respondents were informed that due to the travel of his job and his lack of investment experience, he could not research and monitor investment accounts. Claimant alleged that Respondents assured him that they would closely monitor Claimant's account and that any investments would be consistent with Claimant's stated investment objective. Claimant alleged that he initially agreed to purchase 200 shares of Nestles. In December 1993, Claimant agreed to make a purchase based on Respondents' assurance that there would be the execution of a sell transaction, thereby producing funds to cover the purchase

transaction. Claimant alleged that Respondents executed the purchase transaction but failed to execute the sell order and Claimant received a letter stating that the position would be liquidated if Claimant did not pay for the securities, but Claimant refused.

Claimant alleged that on April 5, 1995 Respondents executed the unauthorized sale of 35,000 warrants of IDM Environmental Corp ("IDM") and 24,500 warrants of Dualstar Technologies Corp. ("Dualstar"). When Claimant returned from a business trip on April 13, 1995, he learned of the transactions and discovered a message from Respondents telling him to authorize the transfer of funds from one of his accounts to another, which he refused to do, as he had not authorized the transactions. Claimant alleged that Respondents refused to rescind the transactions or to liquidate the accounts as instructed by Claimant on April 19, 1995.

Stitsky denied, in his Statement of Answer, the allegations of wrong-doing as asserted in the Statement of Claim. Stitsky maintained that the management of the account was handled by Shamah. Therefore, Stitsky maintained that he should not be held liable for the alleged losses incurred by Claimant.

Shamah did not file an Answer.

#### **RELIEF REQUESTED**

Claimant requested relief of \$231,561.50; interest; punitive damages; attorneys' fees and costs of arbitration.

Stitsky requested that the claims as to him be dismissed.

Shamah did not file a request for relief.

#### **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.

The panel determined that pursuant to the by-laws of the NASD and Rule 10301 of the Code of Arbitration Procedure ("Code"), Respondents Stitsky and Shamah are required to submit to this arbitration notwithstanding their failure to file executed agreements to arbitrate. Therefore, Respondents are bound by the panel's rulings and determinations.

The panel considered Stitsky's Request to File a Late Answer and Request to Appear Via Telephone Conference Call and granted the Request to File a Late Answer but denied the Request for Stitsky to appear via Telephone Conference Call.

**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. That Respondents Stitsky and Shamah are jointly and severally liable to and shall pay to Claimant in the amount of \$262,644.19 in damages, inclusive of interest, less \$72,500.00 paid in settlement by Stratton Oakmont, for a total in damages of \$190,144.19.
2. That Respondents Stitsky and Shamah are jointly and severally liable to and shall pay to Claimant for punitive damages in the amount of \$250,000.00.
3. That each party shall bear its own costs and expenses, including attorney's fees.
4. That any and all relief not specifically addressed herein is denied.

**FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 session x \$750.00 = \$750.00

Forum Fees are assessed to Respondents Stitsky and Shamah, jointly and severally, for a total assessment of \$750.00. Fees are to be paid to NASD Regulation, Inc.

The NASD Regulation shall reimburse to Claimant the \$1,500.00 hearing session deposit previously submitted to the NASD Regulation.

DATE

5/30/97

CONCURRING ARBITRATORS' SIGNATURES

Charles J. Bloom

Charles J. Bloom, Presiding  
Public Arbitrator

Alvora M. Varin-Hommen  
Public Arbitrator

Benham . Fuhrman  
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 12, 1997

**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. That Respondents Stitsky and Shamah are jointly and severally liable to and shall pay to Claimant in the amount of \$262,644.19 in damages, inclusive of interest, less \$72,500.00 paid in settlement by Stratton Oakmont, for a total in damages of \$190,144.19.
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6/3/97

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Public Arbitrator

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6/2/97

Benham Fuhrman  
Benham Fuhrman  
Industry Arbitrator

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June 12, 1997