

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

Milton & Leah Nevitt
Richard & Barbara Rudolph
Barbara Rudolph c/f Jared Rudolph
Barbara Rudolph c/f Marissa Rudolph

96-00378

Name of Respondents

Russo Securities
Smith Barney Shearson, Inc.
J.J. Morgan & Company
Gilford Securities, Inc.
Joseph M. Blumenthal

REPRESENTATION

For Claimants Milton & Leah Nevitt (the "Nevitts"), Richard & Barbara Rudolph (the "Rudolphs") and Barbara Rudolph c/f Jared Rudolph and Marissa Rudolph ("Custodial"), collectively "Claimants", appeared Edward J. Reich, Esq., of the law offices of Cooperman, Levitt, Winikoff, Lester & Newman, P.C. located in New York, New York.

For Respondent Russo Securities ("Russo") appeared Simon S. Kogan, Esq., a sole practitioner with offices located in New York, New York.

For Respondent Smith Barney Shearson, Inc. ("Smith Barney") appeared William A. Hohaus, Esq., in-house counsel for Smith Barney Shearson, Inc. located in New York, New York.

For Respondent J.J. Morgan & Company ("J.J. Morgan"), now known as First Cambridge, appeared Mark M. Rottenberg, Esq., of the law offices of Anderson & Rottenberg, P.C., located in New York, New York.

For Respondent Gilford Securities, Inc. ("Gilford") appeared Joel Levinson, Esq., in-house counsel for Gilford Securities, Inc. located in New York, New York.

For Respondent Joseph M. Blumenthal ("Blumenthal") appeared Michael F. Bachner, Esq., of the law offices of Bachner & Gehn, located in New York, New York.

CASE INFORMATION

Claimants' Statement of Claim was filed on January 24, 1996.

Milton Nevitt's Submission Agreement was signed on January 22, 1996.

Leah Nevitt's Submission Agreement was signed on January 22, 1996.

Richard Rudolph's Submission Agreement was signed on January 23, 1996.

Barbara Rudolph's Submission Agreement was signed on January 23, 1996.

Barbara Rudolph, as c/f Jared Rudolph, signed a Submission Agreement on January 23, 1996.

Barbara Rudolph, as c/f Marissa Rudolph, signed a Submission Agreement of January 23, 1996.

Russo's Statement of Answer and Cross-claim against Blumenthal was filed on October 29, 1996.

Russo did not file a signed Submission Agreement.

Smith Barney's Statement of Answer was filed on May 20, 1996.

Smith Barney's Submission Agreement was signed on May 15, 1996.

J.J. Morgan's Statement of Answer was filed on April 24, 1996.

J.J. Morgan's Submission Agreement was signed on April 23, 1996.

Gilford's Statement of Answer was filed on May 6, 1996.

Gilford's Submission Agreement was signed on May 6, 1996.

Blumenthal's Statement of Answer was filed on May 16, 1996.

Blumenthal did not file a signed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conferences:	June 5, 1997	One Session - Full Panel
	February 23, 1998	One Session - Full Panel
	March 3, 1998	One Session - Full Panel
Hearing Dates/Sessions:	November 20, 1997	Two Sessions
	November 21, 1997	Two Sessions
	December 2, 1997	One Session
	February 26, 1998	Two Sessions
	February 27, 1998	Two Sessions
	March 2, 1998	Two Sessions
	April 1, 1998	Two Sessions
	April 2, 1998	Two Sessions
	April 3, 1998	Two Sessions
	April 21, 1998	One Session
	May 15, 1998	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that Blumenthal was the registered broker who handled their accounts and was employed by Smith Barney, Gilford, J.J. Morgan and Russo. Claimants alleged that Blumenthal induced them to invest in shares of U-Can Win and other securities, by representing to them that: the price of U-Can Win would rise because it was merging with another company; the price of the stocks would rise quickly in a short period; big profits could be made in the short-term; and profits could easily be turned to cash for other investments. Claimants further alleged that Blumenthal made unauthorized purchases in their accounts. Claimants asserted that Blumenthal misrepresented the price of stocks purchased for their accounts and made purchases for the accounts that did not appear on the periodic account statements. Claimants alleged that they relied on the misrepresentations of Blumenthal to their detriment. Claimants also alleged that the securities recommended and purchases were unsuitable for their investment needs. Claimants further alleged that Russo, J.J. Morgan, Gilford and Smith Barney failed to properly supervise Blumenthal and are liable for his conduct.

Russo denied all allegations contained in the Statement of Claim. Russo further maintained that Claimants authorized and/or ratified all transactions. Russo, in its Cross-claim, alleged that if it is held liable it would be entitled to indemnification from Blumenthal.

Smith Barney maintained that only the Nevitts maintained accounts with Smith Barney. Smith Barney further maintained that the Nevitts' purchases resulted in significant gains. Smith Barney maintained that it could not be held responsible for what transpired with the Claimants who did not have Smith Barney Accounts or once Blumenthal left Smith Barney.

J.J. Morgan maintained that it acted in accordance with applicable laws, regulations, and industry customs in connection with Claimants' accounts. J.J. Morgan asserted that any damages suffered by Claimants resulted either from their own acts or the acts of Blumenthal, who acted outside the scope of his employment with J.J. Morgan. J.J. Morgan maintained that the Nevitts did not engage in trading while their account was at J.J. Morgan. J.J. Morgan further maintained that on their respective New Account forms, Claimants indicated that they were experienced investors with speculative investment objectives. J.J. Morgan asserted that Claimants were sent monthly statements and trade confirmations and never objected, in writing or otherwise, to any trade upon receipt of either the monthly statements or trade confirmations.

Gilford maintained that all transactions were suitable, approved and authorized by Claimants. Gilford asserted that the Rudolphs, maintained no individual or custodial accounts at Gilford. Gilford maintained that the Nevitts represented that they were sophisticated investors whose investment objectives were long-term growth and speculation, and that they had the financial resources to support their objectives. Gilford asserted that the Nevitts transferred in shares of U-Can Win, and continued to purchase additional shares while at Gilford. Gilford maintained that it monitored the Nevitts' accounts, and further, sent a letter to the Nevitts asking them to confirm that the transactions in the accounts were in accordance with their investment objectives. Gilford further maintained that the branch manager spoke to the Nevitts, reviewed all activity in each account with them, and, at the conclusion of the conversation, the Nevitts indicated that the activity in the accounts was acceptable and that all of the trades were approved.

Blumenthal denied all allegations contained in the Statement of Claim.

RELIEF REQUESTED

Claimants requested:

- (a) On Claim One against Blumenthal, an amount to be determined by the arbitration panel, but in no event less than \$100,000.00 together with attorneys' fees, punitive damages, and an award of costs;
- (b) On Claim Two against Blumenthal, an amount to be determined by the arbitration panel, but in no event less than \$100,000.00 together with attorneys' fees, punitive damages, and an award of costs;
- (c) On Claim Three against Russo, J.J. Morgan, Gilford, and Smith Barney, jointly and severally, an amount to be determined by the arbitration panel, but in no event less than \$100,000.00, together with attorneys' fees, punitive damages, and an award of costs; and
- (d) Such other and further relief as the arbitration panel deem just and proper.

Russo requested that the Statement of Claim be dismissed and it be awarded its costs and disbursements together with such other and further relief as the arbitrators may deem appropriate. Russo, in its Cross-claim, requested indemnification from Blumenthal in the event it was held liable to Claimants.

Smith Barney requested that the Statement of Claim be dismissed as against it, and that it be awarded costs, including attorneys' fees.

J.J. Morgan requested that the Statement of Claim be dismissed as against it and that it be awarded its reasonable attorneys' fees, the costs of these proceedings, and such other and further relief as the panel deems just and proper.

Gilford requested that the Statement of Claim be dismissed as against it, that all forum fees and filing fees be assessed against Claimants, and that Claimants reimburse it for all reasonable expenses, including lodging, travel costs, expert witness fees, and costs incurred in defense of these claims.

Blumenthal requested that:

- (a) The panel expunge the claim from his record;
- (b) The panel deny Claimants' claim against him; and
- (c) The panel award him the costs associated with defending this claim.

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 original remains on file with the NASD.

The panel made the following determinations concerning Russo and Blumenthal who did not file Submission Agreements:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Russo was a member of the NASD and that Blumenthal was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found jurisdiction over Russo and Blumenthal pursuant to Rule 10301 of the Code.
3. The panel found that Russo and Blumenthal were required to file Submission Agreements with NASD Regulation pursuant to Rule 10314(b) of the Code.

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. Gilford is hereby liable for and shall pay to Milton & Leah Nevitt compensatory damages in the amount of \$20,000.00, plus interest at 9% per annum accruing from January 24, 1996 until the date the award is satisfied.
2. Russo be is hereby liable for and shall pay to Milton & Leah Nevitt compensatory damages in the amount of \$55,000.00, plus interest at 9% per annum accruing from January 24, 1996 until the date the award is satisfied.
3. Gilford is hereby liable for and shall pay to Richard & Barbara Rudolph compensatory damages in the amount of \$75,000.00, plus interest at 9% per annum accruing from January 24, 1996 until date the award is satisfied.
4. Russo is hereby liable for and shall pay to Richard & Barbara Rudolph compensatory damages in the amount of \$125,000.00, plus interest at 9% per annum accruing from January 24, 1996 until date the award is satisfied.
5. Gilford is hereby liable for and shall pay to Claimants the sum of \$187.50, as reimbursement of 25% of the hearing session deposit previously paid by Claimants.
6. Russo is hereby liable for and shall pay to Claimants the sum of \$562.50, as reimbursement of 75% of the hearing session deposit previously paid by Claimants.
7. All Claims against Smith Barney, J. J. Morgan and Blumenthal are hereby denied.

8. Blumenthal's request for expungement is hereby denied.
9. Russo's cross-claim against Blumenthal is hereby denied.
10. All other requests for relief are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Russo shall pay to NASD Regulation, Inc. the \$350.00 past due member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Smith Barney shall pay to NASD Regulation, Inc. the \$350.00 past due member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, J.J. Morgan has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Gilford has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee deposited by Claimants and have assessed the following Forum Fees:

3 Pre-hearing conferences (with panel) x \$750.00	=	\$ 2,250.00
20 Hearing sessions x \$750.00	=	<u>\$15,000.00</u>
Total Forum Fees	=	\$17,250.00

1. Gilford is hereby liable for and shall pay the sum of \$4,312.50, representing 25% of the total forum fees assessed. Claimants previously deposited \$187.50 with NASD Regulation, Inc., and, therefore, Gilford shall remit to NASD Regulation Inc. the \$4,125.00 remaining balance.
2. Russo is hereby liable for and shall pay the sum of \$12,937.50, representing 75% of the total forum fees assessed. Claimants previously deposited \$562.50 with NASD Regulation, Inc., and, therefore, Russo shall remit to NASD Regulation, Inc. the \$12,375.00 remaining balance.
3. Gilford is hereby liable for and shall pay to Claimants the sum of \$187.50 as provided for in the "Award" section above.
4. Russo is hereby liable for and shall pay to Claimants the sum of \$567.50 as provided for in the "Award" section above.

ARBITRATION PANEL

William A. Mechmann, Esq. - Public Chairperson
Caryl D. Feldmann, MA - Public Arbitrator
Robert R. Barker - Industry Arbitrator

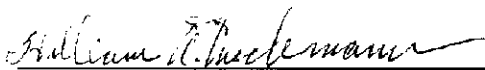
CONCURRING ARBITRATOR'S SIGNATURE



William A. Mechmann, Esq.
Chairperson - Public Arbitrator

Date of decision: July 28, 1998

I, **William A. Mechmann, 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.

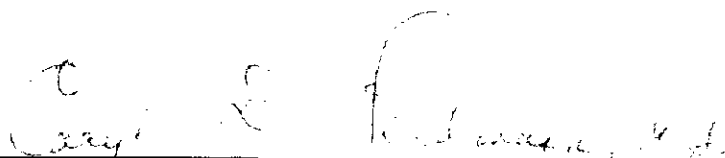


William A. Mechmann, Esq.

ARBITRATION PANEL

William A. Mechmann, Esq. - Public Chairperson
Caryl D. Feldmann, MA - Public Arbitrator
Robert R. Barker - Industry Arbitrator


CONCURRING ARBITRATOR'S SIGNATURE



Caryl D. Feldmann, MA
Public Arbitrator

Date of decision: July 28, 1998

I, **Caryl D. Feldmann, MA**, 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.

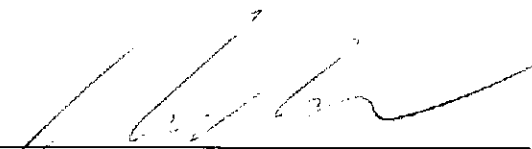


Caryl D. Feldmann, MA

ARBITRATION PANEL

William A. Mechmann, Esq. - Public Chairperson
Caryl D. Feldmann, MA - Public Arbitrator
Robert R. Barker - Industry Arbitrator

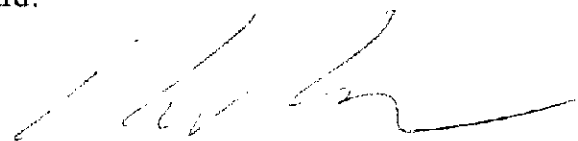
CONCURRING ARBITRATOR'S SIGNATURE



Robert R. Barker
Industry Arbitrator

Date of decision: July 28, 1998

I, **Robert R. Barker**, 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.



Robert R. Barker