

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimants

Jackson Roofing & Gutters Inc Pension Plan & Trust
Jackson Roofing & Gutters Inc Profit Sharing Plan & Trust
Claudia K. & John C.L. Jackson

96-00427

Name of Respondents

Kemper Securities, Inc.
Thomas Gillen

REPRESENTATION

For claimants Jackson Roofing & Gutters, Inc. Pension Plan & Trust ("Pension Plan"), Jackson Roofing & Gutters, Inc. Profit Sharing Plan & Trust ("Profit Sharing"), Claudia K. & John C.L. Jackson (the "Jacksons") (collectively "claimants"), appeared Paul P. Psota, Esq. of the law offices Chattman, Gaines & Stern located in Cleveland, Ohio.

For respondents Kemper Securities, Inc. ("Kemper") and Thomas Gillen ("Gillen") (collectively "respondents"), appeared Don Andrews, Esq., Vice President and Senior Attorney for Everen Securites, Inc.

CASE INFORMATION

Statement of Claim was filed on: January 26, 1996.

The Jacksons' Submission Agreement was signed on: September 26, 1995.

The Pension Plan's Submission Agreement was signed on: October 26, 1995.

The Profit Sharing's Submission Agreement was signed on: October 26, 1995.

A Joint Statement of Answer was filed by respondents on: March 21, 1996.

Kemper's Submission Agreement was signed on: March 21, 1996.

Gillen's Submission Agreement was signed on: May 10, 1996.

HEARING INFORMATION

Pre-Hearing Conference:	May 23, 1997	-	One Session
	June 10, 1997	-	One Session

Hearing Dates/Sessions:	June 23, 1997	-	Two Sessions
	June 24, 1997	-	One Session
	June 25, 1997	-	Two Sessions

The hearings on June 23 and 24, 1997 were conducted at the Embassy Suites Hotel located in Cleveland, Ohio. The hearings on June 25, 1997 were conducted at the Renaissance Cleveland Hotel located in Cleveland, Ohio.

CASE SUMMARY

Claimants alleged that, after their broker Wayne T. Lurch, Sr. ("Lurch") passed away in November, 1993, Gillen became their financial consultant. Claimants contended that, based upon Lurch and Gillen's representations that they were experts in the securities investment field and that claimants should rely upon their expertise and knowledge, claimants vested in Lurch and Gillen actual control over the handling of their accounts. Claimants maintained that the Jacksons were unsophisticated investors and that their investment objectives were conservative and included conservation and appreciation of principal. Claimants alleged that, in spite of the Jacksons' investment objectives and standing in life, Lurch and Gillen induced the Jacksons to enter into the sale and purchase of unsuitable and speculative securities and to leverage their investments by the use of a margin account. In addition, claimants contended that Kemper failed to maintain and enforce a proper system of internal supervision over Lurch and Gillen.

Respondents alleged that the Jacksons opened their accounts with Everen in 1979 and that Mr. Jackson became friends with Lurch. Respondents alleged that the Jacksons were millionaires with significant assets whose investment objectives varied from being conservative to speculative. Respondents also alleged that Mr. Jackson presented himself as a quasi expert, not a naive victim, and often discussed investment ideas with Lurch. Respondents contended that each purchase made in claimants' accounts either originated with Mr. Jackson or was a part of a strategy developed in tandem with Lurch. Moreover, respondents maintained that the trades in claimants' accounts were authorized and approved by Mr. Jackson and that, for seventeen years, the Jacksons never raised an objection about their accounts.

RELIEF REQUESTED

Claimants requested actual damages of at least \$200,000.00, plus interest of 10% per annum, attorneys' fees and arbitration costs. In addition, claimants requested exemplary and/or punitive damages in the amount of \$200,000.00.

Respondents requested that claimants' claims be dismissed in their entirety, and that they be awarded costs and attorneys' fees.

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 NASD.

Regulation, Inc.

Respondents moved to dismiss certain claims pursuant to Rule 10304 (formerly known as Section 15) of the Code of Arbitration Procedure (the "Code") and a preliminary administrative ruling was issued by NASD Regulation, Inc. The panel of arbitrators considered this motion de novo and has determined that claims pertaining to purchases occurring more than six years prior to claimant's filing of the Statement of Claim are ineligible and are hereby dismissed.

By letter dated June 27, 1997, respondents requested that the panel accept and consider a post-hearing submission. After due deliberation, the panel determined not to accept this submission.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against respondents are hereby dismissed in their entirety.
2. As to the claims asserted against Gillen, the panel makes the following additional specific finding and award for Gillen as follows:

"In regard to claims asserted against the individual respondent Thomas Gillen, the panel finds that there were no grounds for allegations of fraud, breach of fiduciary duty or other intentional or reckless conduct as set out in the Statement of Claim, and that no evidence of any misconduct by Gillen was presented at the hearing. The panel has concluded that having been named an individual Respondent in this proceeding, Thomas Gillen may be unfairly burdened or prejudiced in securities industry registration processes, and could be subjected to heightened public or regulatory agency scrutiny by reason of mandatory reporting procedures through the Central Registration Depository System (CRD). The panel, therefore, directs that this specific finding concerning Gillen be made a part of any disclosure or report of this arbitration through the CRD or otherwise, and cautions that any prior CRD disclosure regarding Gillen concerning the claims asserted in this arbitration is qualified by this finding of the Panel.

3. Claimants' request for punitive damages is hereby denied.
4. The parties' respective requests for attorneys' fees are hereby denied.
5. All other requests are hereby denied.

FORUM FEES

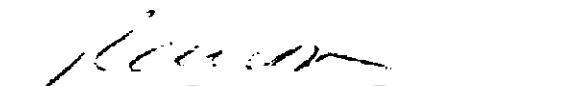
Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee and the \$350.00 member surcharge

previously paid to NASD Regulation, Inc. and have assessed the following forum fees:

2 pre-hearing conferences	=	\$ 600.00
<u>5 hearing sessions x \$750.00</u>	=	<u>\$3,750.00</u>
Total	=	\$4,350.00

Claimants be and hereby are jointly and severally liable for the sum of \$4,350.00, representing the total amount of forum fees assessed. Claimants previously deposited \$750.00 with NASD Regulation, Inc. and, therefore, shall pay to NASD Regulation, Inc., the balance of \$3,600.00.

Arbitrators' Signatures



Robert Rapp, Esq.
Chairperson-Public Arbitrator

Robert G. Conway
Public Arbitrator

Richard H. Haas
Industry Arbitrator

Date of Decision: September 18, 1997

Arbitrators' Signatures

Robert Rapp, Esq.
Chairperson-Public Arbitrator



Robert G. Conway
Public Arbitrator

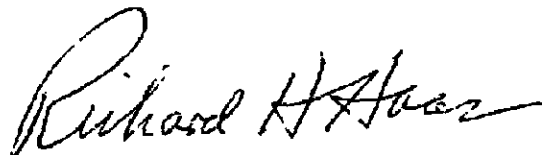
Richard H. Haas
Industry Arbitrator

Date of Decision: September 18, 1997

Arbitrators' Signatures

Robert Rapp, Esq.
Chairperson-Public Arbitrator

Robert G. Conway
Public Arbitrator

A handwritten signature in cursive script, reading "Richard H. Haas". The signature is written in dark ink and is positioned above a horizontal line.

Richard H. Haas
Industry Arbitrator

Date of Decision: September 18, 1997