

**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

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In the Matter of the Arbitration Between

Name of Claimant

Karen Antos

96-01231

Name of Respondents

A.J. Michaels & Co., Inc.  
James A. Romanosky

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**REPRESENTATION**

Claimant Karen Antos ("claimant") appeared Pro Se.

For respondent A.J. Michaels & Co., Inc. ("AJM") appeared W. Hubert Plummer of the law firm Plummer & Plummer, LLP located in Hauppauge, New York.

Respondent James A. Romanosky ("Romanosky") did not enter an appearance at the hearing.

**CASE INFORMATION**

Statement of Claim filed: March 19, 1996.

Claimant's Submission Agreement signed on: March 15, 1996.

Statement of Answer and Cross Claim filed by respondent AJM on: July 26, 1996.

Respondent AJM's Submission Agreement signed on: July 26, 1996.

Respondent Romanosky did not file a properly executed Submission Agreement or a Statement of Answer.

**HEARING INFORMATION**

Hearing Dates/Sessions: January 17, 1997 two sessions

The hearings were conducted at Club Quarters located at 52 William street located in New York, New York.

### CASE SUMMARY

Claimant alleged that she opened an account with AJM in November of 1992 and that Romanowsky was her account executive. Claimant further alleged that at Romanowsky's recommendation, she agreed to invest \$5,000.00 in Murray United Development but informed him that she was going through a divorce and could not risk additional money. Claimant also alleged Romanowsky understood that she could not afford to lose this money. Claimant contended that Romanowsky approached her periodically requesting additional investment funds during the period of November 25, 1992 through August 1994. Claimant contended that she gave him money on five more occasions with the understanding that the investments which he was purchasing were not to be risky. Claimant further contended that Romanowsky used his discretion to trade securities and that on March 21, 1993 he started purchasing shares of International Water Beverage, Co. Claimant also contended that she asked Romanowsky about the stock to which he advised her it was good solid stock and would go up in value in a few months. Claimant asserted that Romanowsky began selling shares she owned in other securities and used the proceeds to accumulate shares of International Water Beverage despite her expressed concerns that the portfolio should remain diversified to reduce risks. Claimant further asserted that Romanowsky continued purchasing the security as it fell in value saying that she should purchase more shares to average down the price at which she owned the security. Claimant further alleged that she eventually told Romanowsky that she was unhappy about the losses in her account and that she wanted her money returned in full. Claimant contended that as a result of the above, she has suffered a loss for which the respondents should be held liable.

Respondent AJM denied each and every allegation of the Statement of Claim except that claimant has been its customer since January of 1992 and that she was serviced by respondent Romanowsky. Respondent maintained that no representations were made to claimant that Murray United Development Corporation or International Water Beverage, Co. were without risk. Respondent further maintained that trades were not made on her behalf without her prior knowledge and consent. Respondent also maintained that in the New Account Application and in the updated Application claimant's investment objective was speculation and that she represented that she had the resources to so invest. Respondent contended that claimant received monthly reports reflecting the trading and that she did not object until after the market decline of International Beverage, Co. Respondent further contended that claimant's trading generated over \$19,000.00 in profits during the year ending December 12, 1993 to which she did not complain.

Respondent AJM entered a cross claim against respondent Romanowsky for indemnification for any liability which may be entered against it. Respondent alleged that its Supervisory Procedure in effect during his employment at AJM prohibited discretionary trading without a written power of attorney on file. Respondent further alleged that Romanowsky knew of this procedure and that no such power of attorney was on file. Respondent contended that as a result of the above, it should not be held liable.

**RELIEF REQUESTED**

Claimant requested \$28,148.09 in actual damages.

Respondent AJM requested that the claims be dismissed in their entirety with reimbursement of costs and disbursements. Respondent further requested that a judgment be entered against respondent Romanowsky for the amount of any judgment which may be obtained by claimant against it.

**OTHER ISSUES CONSIDERED & DECIDED**

The arbitration panel made the following rulings concerning respondent James A. Romanosky who did not file a Statement of Answer nor a Submission Agreement, and who also failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondent James A. Romanowsky was an associated person of a member firm of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondent Romanowsky pursuant to Rule 10301 of the NASD Code of Arbitration Procedure.
3. In view of (2) above, the panel found respondent James A. Romanowsky was required to file with NASD Regulation, Inc. a Statement of Answer and a properly executed Submission Agreement pursuant to Rule 10314(b) of the NASD Code of Arbitration Procedure. However, the panel found that the Statement of Claim and Cross Claim were not properly served upon respondent Romanowsky, pursuant to Rule 10314(a) and (b) of the Code nor was he provided due notice of the hearing in accordance with Rules 10310, 10315 and 10318 of the Code. Nevertheless, the panel determined to proceed with the hearing without respondent James A. Romanowsky and dismissed all claims asserted against Romanowsky without prejudice.

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.

**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 A.J. Michaels hereby and is liable and shall pay to claimant Karen Antos \$34,725.00 in actual damages.
2. Respondent A.J. Michaels hereby and is liable and shall pay to claimant Karen Antos simple interest at 9% per annum from the date of the award until payment.
3. The cross claim of respondent A.J. Michaels against respondent James A. Romanowsky be and hereby is dismissed without prejudice.
4. The parties shall bear their respective costs and attorney's fees.
5. All other relief requests are denied.

#### **FORUM FEES**


Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee previously deposited by claimant and hold respondent A.J. Michaels liable for the \$500.00 non-refundable cross claim filing. Further the panel have assessed the following forum fees:

two sessions x \$400.00	= \$800.00
minus claimant's \$400.00 deposit	= <u>\$400.00</u>
total outstanding	= \$400.00

Respondent A.J. Michaels be and hereby is liable for the sum of \$800.00 representing the total amount of forum fees assessed. Therefore, respondent A.J. Michaels shall pay to claimant Karen Antos \$400.00 as reimbursement of the hearing session deposit and shall pay to NASD Regulation, Inc. \$400.00 in satisfaction of forum fees.

**ARBITRATORS' SIGNATURES**

I, Cynthia Boyce, 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.

  
Cynthia Boyce, Esq.  
Public Chairperson

I, Harry Lundgren, 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.

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Harry Lundgren  
Industry Arbitrator

I, Saul Scheier, 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.

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Saul Scheier, Esq.  
Public Arbitrator

Date of Decision: April 22, 1997

**ARBITRATORS' SIGNATURES**

I, Cynthia Boyce, 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.

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Cynthia Boyce, Esq.  
Public Chairperson

I, Harry Lundgren, 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.



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Harry Lundgren  
Industry Arbitrator

I, Saul Scheier, 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.

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Saul Scheier, Esq.  
Public Arbitrator

Date of Decision: April 22, 1997

**ARBITRATORS' SIGNATURES**

I, Cynthia Boyce, 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.

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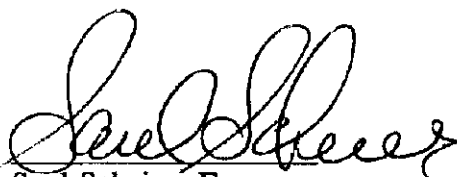
Cynthia Boyce, Esq.  
Public Chairperson

I, Harry Lundgren, 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.

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Harry Lundgren  
Industry Arbitrator

I, Saul Scheier, 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.

A handwritten signature in cursive script, appearing to read 'Saul Scheier', written over a horizontal line.

Saul Scheier, Esq.  
Public Arbitrator

Date of Decision: April 22, 1997