

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Darren Shasho

96-01269

Name of Respondents

Investors Associates Inc.  
Lawrence Penna  
Herman Epstein

REPRESENTATION

For Claimant Darren Shasho ("claimant") appeared David S. Richan, Esq. of Tenzer Greenblatt, New York, New York.

For Respondents Investor Associates, Inc. ("IAI"), Lawrence Penna ("Penna") and Herman Epstein ("Epstein") appeared Lawrence R. Gelber, Esq. of Beigel, Schy, Lasky, Rifkind, Fertik & Gelber, New York, New York.

CASE INFORMATION

Statement of Claim filed: March 21, 1996.

Claimant's Submission Agreement signed on: March 20, 1996.

Joint Statement of Answer filed by Respondents on: June 4, 1996.

Respondents IAI, Penna and Epstein did not file executed Submission Agreements as required by Section 10314 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions:	December 17, 1996	2 sessions
	January 6, 1997	1 session
	January 7, 1997	2 sessions

The hearing sessions on December 17, 1996 took place at the offices of the National Association of Securities Dealers, Inc., New York, New York. The hearing sessions on January 6 and 7, 1997 were held at the City Midday Club, New York, New York.

CASE SUMMARY

Claimant alleged that his former employer, IAI, and its principals illegally and wrongfully withheld and

converted almost \$200,000.00 of claimant's assets. Claimant asserted that this amount constituted the majority of his personal net worth and life savings. Claimant alleged that beginning in March 1994, he maintained a nondiscretionary personal account at IAI in which he held both securities and cash and for which he periodically purchased and sold securities. Claimant maintained that, during the relevant time period, his account contained approximately \$200,000.00 in cash and stock.

Claimant further alleged that on or about March 4, 1996, he authorized and directed in writing that IAI wire transfer \$80,000.00 in cash from his IAI account to his personal bank account at United Jersey Bank. Claimant asserted that, without his knowledge or consent, respondent Penna caused IAI to block the wire transfer to United Jersey Bank and instead caused the \$80,000.00 to be transferred from claimant's account into IAI's firm account. Claimant alleged that, although he had never authorized the transaction, IAI's records reflected that the \$80,000.00 journal into IAI's account was accomplished pursuant to a letter of authorization.

Claimant alleged that he demanded that respondents Penna and Epstein immediately process his initial \$80,000.00 wire transfer as instructed. Claimant contended that Penna and Epstein informed him that one of claimant's brokerage customers had, several weeks earlier, complained about an unauthorized purchase of securities by claimant in that customer's account and that claimant's \$80,000.00 would be held as security until the brokerage customer's complaint was resolved. Claimant alleged that he denied the customer's allegation.

Claimant further stated that on or about March 8, 1996, he authorized and directed in writing that the balance of the cash in his personal account at IAI, approximately \$100,000.00, be wired to his personal bank account at United Jersey Bank. Claimant alleged that respondents refused to process this request.

Claimant alleged that respondents thereafter demanded that he sign an agreement under which claimant would set aside \$50,000.00 for security with respect to the aforementioned customer complaint. Claimant also alleged that respondents advised him that once such an agreement was signed, the balance of claimant's funds in his personal account would be wired to claimant's bank account. Claimant alleged that respondents ridiculed and insulted him and threatened him with termination if claimant did not sign their agreement.

Claimant alleged that the proposed agreement contained numerous unfair provisions and that, as a result, he refused to sign it. Claimant alleged that in retaliation, respondents suspended his employment and refused to allow him to return to the office. Claimant alleged that he resigned from IAI on March 18, 1996. Claimant alleged that he repeatedly demanded the return of his personal property from respondents but that his requests had been refused.

Respondents denied the allegations made by claimant and claimed that the allegations in claimant's statement of claim were an artifice designed by claimant to escape the consequences of his own unlawful activity. Respondents alleged that claimant was unlawfully seeking to divert funds from their rightful owner in connection with a series of unauthorized transactions in which claimant engaged to the direct damage of respondent IAI and its associates. Respondents asserted that all monies owed to claimant have been delivered either to claimant or his agents. Respondents further contended that the sole reason that the brokerage customer for whom claimant made unauthorized transactions did not file a claim was that respondents made the brokerage customer whole.

Respondents alleged that claimant's termination for cause was proper and claimed that claimant was terminated for repeated misconduct prior to claimant's purported resignation. Respondents asserted that such misconduct consisted in claimant's execution of transactions for respondent IAI's customer accounts

without obtaining approval of such customers, thereby exposing IAI to monetary damages and regulatory inquiries. Respondents claimed that IAI had an affirmative obligation to terminate claimant for such misconduct. Respondents denied claimant's allegation that they had been unjustly enriched

Respondents alleged that the Statement of Claim failed to state a claim upon which relief could be granted, was barred by the doctrine of unclean hands and the doctrine of estoppel. Respondents also alleged that claimant failed to mitigate his damages and that all transactions in claimant's account were for his own risk and account. Respondent maintained that claimant could not avoid his account obligations by executing a trade and then transferring what appeared to be a losing transaction into the accounts of his customers.

### **RELIEF REQUESTED**

Claimant requested that the panel order respondents to immediately process the wire transfers directed and authorized by claimant or award claimant a total sum of \$200,000.00 in compensatory damages for conversion, unauthorized trading and unjust enrichment. Claimant also requested that the panel award claimant monetary damages for wrongful discharge in an amount determined at the hearing; award claimant punitive damages for the respondents' intentional and malicious conduct and award claimant all costs and attorneys fees incurred by claimant in pursuing his claims along with such other and further relief as the panel deemed appropriate.

Respondents requested the dismissal of all allegations in the Statement of Claim; all costs, fees, expenses and reasonable attorneys' fees in an amount not less than \$12,000.00 and such other and further relief as justice and equity required.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Penna did not appear at the hearing.

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.

### **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. Respondents be and hereby are jointly and severally liable and shall pay claimant the sum of \$89,000.00.
2. Claimant's request for interest is denied.
3. Claimant's request for punitive damages is denied.
4. The parties' request for attorney's fees is denied.

**FORUM FEES**

Pursuant to Section 10205 of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee previously deposited by claimant and have assessed the following Forum Fees:

5 sessions X \$750.00	=	\$3750.00
minus hearing session		
deposit	-	<u>750.00</u>
TOTAL OUTSTANDING	=	\$3000.00

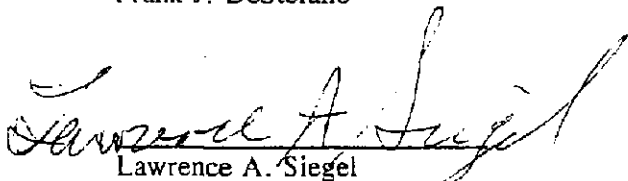
Claimant be and hereby is liable for the sum of \$3750.00 representing one hundred percent of the total forum fees assessed. Claimant has previously deposited \$750.00 with the NASD and owes a balance of \$3000.00.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures  
Name

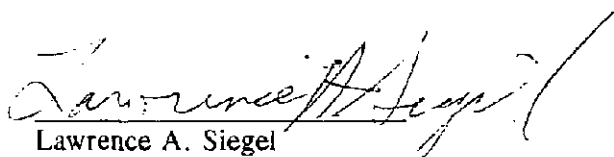
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Diane Getzier, Esq.

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Frank J. DeStefano

  
Lawrence A. Siegel

NASD Date of Decision: January 30, 1997

I, Lawrence A. Siegel, do hereby certify that this is my decision in the above-referenced matter.

  
Lawrence A. Siegel

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Concurring Arbitrators' Signatures  
Name

*Diane Getzler, Esq.*  
Diane Getzler, Esq.

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Frank J. DeStefano

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Lawrence A. Siegel

NASD Date of Decision: January 30, 1997

I, Diane Getzler, Esq., do hereby certify that this is my decision in the above-referenced matter.

*Diane Getzler, Esq.*  
Diane Getzler, Esq.

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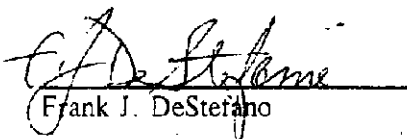
\_\_\_\_\_  
Diane Getzler, Esq.

  
Frank J. DeStefano

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Lawrence A. Siegel

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I, Frank J. DeStefano, do hereby certify that this is my decision in the above-referenced matter.

  
Frank J. DeStefano