

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

I. Scott and Ellen K. Grosser

96-01510

Name of Respondents

Janney Montgomery Scott, Inc.  
Anthony W. Allen  
Eugene E. Peroni, Jr.

REPRESENTATION

For Claimants I. Scott and Ellen K. Grosser appeared, Anthony P. Picadio, Esq., from the law firm of Picadio, McCall, Kane & Norton located in Pittsburgh, Pennsylvania.

For Respondents, Janney Montgomery Scott, Inc. ("Janney Montgomery"), Anthony W. Allen ("Allen"), Eugene E. Peroni, Jr. ("Peroni") (collectively "Respondents") appeared, Foster Goldman, Jr., Esq., from the law firm Markel, Schafer & Goldman located in Pittsburgh, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on: April 8, 1996

Claimants' Submission Agreement signed on: April 2, 1996

Joint Statement of Answer filed by Respondents on: July 2, 1996

Respondent, Janney Montgomery's Submission Agreement signed on: May 14, 1996

Respondent Allen's Submission Agreement signed on: June 19, 1996

Respondent Peroni's Submission Agreement signed on: July 2, 1996

HEARING INFORMATION

Hearing dates/sessions:

January 30, 1997	-	Two Sessions
January 31, 1997	-	Two Sessions
February 14, 1997	-	One Session

The hearings were conducted at the Westin William Penn Hotel, 530 William Penn Place located in Pittsburgh, Pennsylvania.

## CASE SUMMARY

Claimant alleged that, in May, 1994, they opened a non-discretionary account with Janney Montgomery through, registered representative, Allen and advised Allen that their investment objective was "growth." Claimants alleged that in November 1994, they deposited \$290,000 in the account, and from that time until August 1995, the account appreciated to approximately \$337,000.

Claimants alleged that in the summer of 1995 Allen began promoting the stock picking abilities of Peroni, a well known securities analyst employed by Janney Montgomery and stated Peroni's top ten stock picks consistently gained 30% per year. Claimants alleged that Allen stated that Peroni would not manage an account having less than \$1 million in value. Claimants alleged that after the repeated recommendation of Allen they agreed to place funds under Peroni management. Claimant alleged that they deposited additional funds in the account bringing the value to \$790,000.00 and were informed by Allen that Peroni would waive the minimum balance requirement. Claimants alleged they agreed that Peroni would make all the investment decisions in the account and would telephone his stock selections to Allen who would then place the necessary buy and sell orders. Claimants alleged they executed a trading authorization authorizing Allen to make trades in their account.

Claimants asserted that, from September 6, 1995, until November 17, 1995, when they revoked the discretionary trading authority, their account lost over \$200,000.00. Claimants alleged that additional losses were sustained as a direct result of the positions taken by Peroni prior to the revocation of the discretionary authority.

Claimants alleged that because they had a low tolerance for risk and their investment objective was growth, Peroni's trading system exposed them to a far higher degree of risk than was suitable in light of their investment objectives. Claimants alleged that the trading in their account was inept, negligent and did not conform to the agreed upon trading strategy. Claimants also alleged that respondents breached their fiduciary duty to them by exposing their savings to exceptionally high risks of loss.

Respondents maintained that the Claimants were experienced and sophisticated investors who opened three accounts with Janney Montgomery in 1994. Respondent maintained that when the Claimants opened their accounts, Mr. Grosser disclosed that he had liquid assets of over \$3 million, and that Claimants estimated annual income exceeded \$100,000. Respondent maintained that Claimants informed Allen that their investment objective on all of their accounts was "growth" and that they were not adverse to taking risks.

Respondents maintained that the Claimants divided their personal investments between their two joint accounts. Respondents maintained that the Claimants decided to follow an aggressive strategy for one of the accounts, using the recommendations of Peroni. Respondents maintained that, on October 31, 1994, Dr. Grosser opened a stock trading account at Janney Montgomery which would employ the trading strategies developed by Peroni. Respondents maintained that Dr. Grosser acknowledged he had discussed the technical methods used by Peroni and that he was satisfied that such an approach was properly suited to his investment goals. Respondent maintained that upon Dr. Grosser's authorization, Allen would enter all orders suggested by Peroni.

Respondents maintained that, from November 1994, to August 1995, their stock value in the account under Peroni's management grew from \$283,858.00 to \$337,421.00. Respondent maintained that Claimants were impressed with Peroni and expressed a desire to be even more aggressive. Respondents maintained that after being advised of the increased risk of concentrating large share amounts in a few stocks, Claimants decided to have Peroni manage their entire account. Respondents maintained that the Claimants authorized Allen, to buy, sell and trade securities for their account. Respondents further maintained that, on September 1, 1995, the Claimants signed a letter agreeing to change the strategy in their stock trading account to a more aggressive nature.

Respondents maintained that, from early September to mid-November 1995, the account decreased in value. Respondents maintained that during this period Dr. Grosser spoke on the phone with Allen three to five times every business day and knew precisely what was going on in the account

Respondents maintained that on November 17, 1995, the Claimants removed discretionary authority on the account and reinstated non-discretionary status. Respondents maintained that when the original trading program was put back in place the account recovered some of its losses, however, the Respondents subsequently closed their accounts with Janney Montgomery.

### **RELIEF REQUESTED**

Claimants requested damages in excess of \$200,000.00 plus interest from the date of loss; punitive damages; treble damages; attorneys' fees and the costs of these proceedings.

Respondents requested that all claims be dismissed in their entirety and that costs and forum fees be assessed against Claimants.

### **OTHER ISSUES CONSIDERED AND 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.

### **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. All claims asserted Claimants against Respondents, Janney Montgomery Scott, Inc., Anthony W. Allen, and Eugene E. Peroni, Jr. are dismissed in their entirety;
2. Claimants' request for punitive damages is denied;
3. The parties are to bear their respective costs, including attorney's fees; and,
4. All other requests for relief are denied.

### **FORUM FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee previously deposited by the Claimants and have assessed the following forum fees:

Total Forum Fees:                      \$5,000.00              (5 Sessions x \$1,000)

1. Claimants are jointly and severally assessed \$2,500.00 representing one-half of the total forum fees due, less \$1,000.00 previously deposited, leaving \$1,500.00 due. Therefore, Claimants, I. Scott and Ellen K. Grosser, are jointly and severally liable and shall pay to NASD Regulation, Inc. the sum of \$1,500.00.

2. Respondents, Janney Montgomery Scott Inc., Anthony W. Allen and Eugene E. Peroni, Jr. are jointly and severally assessed \$2,500.00 representing one-half of the total forum fees due. Therefore, Respondents, Janney Montgomery Scott Inc., Anthony W. Allen and Eugene E. Peroni, Jr., are jointly and severally liable and shall pay to NASD Regulation, Inc. the sum of \$2,500.00.

**Fees are payable to NASD Regulation, Inc.**

**ARBITRATORS' SIGNATURES**

A. Ralph Ellis

A. Ralph Ellis, Esq.  
Public Chairperson


Gerhard W. Elm  
Public Panelist

Paul H. McKenna  
Industry Panelist

Date of Decision: \_\_\_\_\_

**ARBITRATORS' SIGNATURES**

\_\_\_\_\_  
A. Ralph Ellis, Esq.  
Public Chairperson

  
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Gerhard W. Elm  
Public Panelist

\_\_\_\_\_  
Paul H. McKenna  
Industry Panelist

Date of Decision: \_\_\_\_\_

ADJUTATORS' SIGNATURES

A. Ralph Ellis, Esq.  
Public Chairperson

Gerhard W. Elm  
Public Panelist

  
Paul H. McTernan  
Industry Panelist

Date of Decision: \_\_\_\_\_