

## NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

Marjorie H. Steger

vs.

Case No.

96-01564

Names of Respondents

Janney Montgomery Scott, Inc.  
Melvin Kahn

**REPRESENTATION**

For Claimant Marjorie H. Steger ("Claimant") appeared Donald G. McGrath, Esq. of the law firm Falk & Siemer, LLP located in Buffalo, New York.

For Respondents Janney Montgomery Scott, Inc. ("Janney Montgomery") and Melvin Kahn ("Kahn"), hereinafter collectively referred to as "Respondents," appeared Daniel B. Berman, Esq. of the law firm Hancock & Estabrook, LLP located in Syracuse, New York.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on April 5, 1996. Claimant's Submission Agreement was signed on March 25, 1996.

A Joint Statement of Answer was filed by Respondents on June 27, 1996. Respondent Janney Montgomery's Submission Agreement was signed on May 14, 1996. Respondent Kahn's Submission Agreement was signed on July 11, 1996.

**HEARING INFORMATION**

Pre-Hearing Conference: November 3, 1997 - One Session

Hearing Date/Sessions: January 26, 1998 - Two Sessions

The hearing was conducted at the Raddison Downtown, located in Buffalo, New York.

**CASE SUMMARY**

Claimant alleged that in 1989, the time of her first transaction, she was in her mid-seventies, and was an unsophisticated investor with virtually no investment experience. Claimant also alleged that her primary investment objective was for a conservative, well balanced portfolio with income and conservation of principal. Claimant further alleged that in 1990, she entrusted Respondents with over \$177,000.00, including cash and blue chip stocks.

Claimant contended that rather than maintain this conservative portfolio, Respondents recommended and sold limited partnerships, speculative penny stocks and options. Claimant also contended that these investments included Centocor, Inc., Commodore Intern and Mentor Graphics, which were unsuitable for her. Claimant further contended that Respondents took advantage of her ignorance and vulnerability, and manipulated her account for their benefit. Claimant asserted that Respondents breached their contracts, and breached their duties required by the rules and regulations of the NASD and New York Stock Exchange, and industry customs, practices and standards. Claimant also asserted that Respondents engaged in common law fraud. Claimant further asserted that Respondents violated federal and state securities laws. Claimant contended that Respondent Janney Montgomery failed to properly supervise Respondent Kahn.

Respondents denied all of Claimant's allegations and denied liability. Respondents asserted four affirmative defenses. Respondents maintained that Claimant did not suffer a loss during the time she invested her monies through Respondent Janney Montgomery, but rather, received a positive return on her investments. Respondents also maintained that the overall investment program in which the Claimant engaged with Respondents was suitable. Respondents further maintained that when Claimant opened the account, she informed Respondent Kahn that she needed \$20,000.00 annually in income, \$8,400.00 of which she received from social security. Respondents alleged that, prior to investing with Respondents, Claimant had over one-half of her assets invested in a single stock, Southern, and that Respondents helped Claimant diversify her portfolio. Respondents also alleged that Claimant withdrew a total of \$46,329.13 over a three year period.

#### **RELIEF REQUESTED**

Claimant requested:

1. that the arbitrators rescind all the limited partnership transactions and award damages in the sum of at least \$80,000.00 through June 31, 1994 plus interest from said date;
2. damages for physical and mental suffering;
3. all costs, expenses and disbursements, including reasonable attorneys' fees in pursuing this arbitration proceeding; and
4. such other and further relief as the arbitration panel deemed just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety.

#### **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.

### AWARD

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

1. Respondents be and hereby are liable and shall pay to Claimant compensatory damages in the amount of \$27,000.00, plus interest at 9% per annum accruing from February 10, 1998 until the date the award is paid. The award of damages includes interest prior to the date of the decision.
2. Forum fees are to be assessed equally between Claimant and Respondents.
3. Each party shall bear its respective costs, including attorneys' fees.
4. All other requests for relief are hereby 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 \$150.00 non-refundable filing fee previously submitted by Claimant, and the \$300.00 member surcharge previously submitted by Respondent Janney Montgomery. The arbitrators have assessed the following forum fees:

1 Pre-Hearing Conference with Panel	=	\$ 500.00
2 Hearing Sessions x \$500.00	=	\$1,000.00
Total Forum Fees	=	\$1,500.00

1. Claimant be and hereby is liable and shall pay the sum of \$750.00, representing one-half of the total forum fees assessed. Claimant previously deposited \$500.00 with the NASD, and therefore, owes the balance of \$250.00.
2. Respondents be and hereby are jointly and severally liable and shall pay the sum of \$750.00, representing one-half of the total forum fees assessed.
3. Claimant is also assessed a \$500.00 fee for the postponement of the May 28 and 29, 1997 hearings. Claimant previously deposited \$250.00, and owes a balance of \$250.00.

Fees are payable to NASD Regulation, Inc.

**ARBITRATORS' SIGNATURES**

I, **John M. Hinchcliff**, 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.

  
\_\_\_\_\_  
John M. Hinchcliff  
Public Chairperson

I, **George Massik**, 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.

\_\_\_\_\_  
George Massik  
Public Panelist

I, **Richard A. Scalfani**, 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.

\_\_\_\_\_  
Richard A. Scalfani  
Industry Panelist

Date of Decision: March 4, 1998

**ARBITRATORS' SIGNATURES**

I, **John M. Hinchcliff**, 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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John M. Hinchcliff  
Public Chairperson

I, **George Massik**, 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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George Massik  
Public Panelist

I, **Richard A. Scalfani**, 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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Richard A. Scalfani  
Industry Panelist

Date of Decision: March 4, 1998

**ARBITRATORS' SIGNATURES**

I, **John M. Hinchcliff**, 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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John M. Hinchcliff  
Public Chairperson

I, **George Massik**, 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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George Massik  
Public Panelist

I, **Richard A. Scalfani**, 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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Richard A. Scalfani  
Industry Panelist

Date of Decision: March 4, 1998