

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Hans H. Ammann

96-01837

Name of Respondents

M. Rimson & Co. Inc.
Emmett A. Larkin Company, Inc.
Ed Veisman
Moshe Rimson
Alex D. Shindman

REPRESENTATION

For Claimant Hans H. Ammann ("Claimant") appeared Jordon W. Siev, Esq., of Anderson, Kill, Olick, & Oshinsky, P.C. located in New York.

Respondent M. Rimson & Co., Inc. ("Rimson & Co.") failed to appear.

For Respondent Emmett A. Larkin Co., Inc. ("Larkin") appeared Pete Root, Esq., of Orrick, Herrington & Sutcliffe LLP located in San Francisco, CA.

Respondent Ed Veisman ("Veisman") failed to appear.

Respondent Moshe Rimson ("Rimson") failed to appear.

Respondent Alex D. Shindman ("Shindman") failed to appear.

CASE INFORMATION

The Statement of Claim was filed on: April 29, 1996.

An amended Statement of Claim was filed on: September 24, 1996.

Claimant's Submission Agreement was signed on: April 18, 1996.

An amended Submission Agreement was signed on: September 24, 1996.

Respondent M. Rimson & Co., Inc. failed to submit a Statement of Answer or a signed Submission Agreement.

Respondent Emmett A. Larkin Co., Inc.'s Statement of Answer was filed on: May 29, 1996.

Respondent Emmett A. Larkin Co., Inc.'s Submission Agreement was signed on: May 28, 1996.

Respondent Ed Veisman failed to submit a Statement of Answer or a signed Submission Agreement.

Respondent Moshe Rimson failed to submit a Statement of Answer or a signed Submission Agreement.

Respondent Alex D. Shindman failed to submit a Statement of Answer or a signed Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:

July 15, 1997

Two Sessions

The hearings were held at the offices of NASD Regulation, Inc. located at 125 Broad Street in New York, New York.

CASE SUMMARY

Claimant alleged that Respondents' engaged in fraud, breach of contract, negligence, and breach of fiduciary duty. Claimant's amended Statement of Claim extended the allegations to include respondents Moshe Rimson, principal of M. Rimson & Co., Alex Shindman and Ed Veisman, brokers at M. Rimson & Co..

Claimant alleged that Respondents' engaged in fraud in that: 1) he was charged commission on all trades, despite being told the contrary by Shindman; 2) failed to execute trades for which claimant paid; 3) Claimant's Intend to Buy statement for purchases was never honored; 4) Veisman disregarded Claimant's instructions not to purchase any of the speculative investments offered by Rimson & Co., and to reverse the unauthorized sale of his 100 shares in Quaker; and, 5) Veisman deliberately concealed from Claimant, in a telephone conversation, that he had purchased Twilight securities the day before without authorization.

Claimant stated that he entered into a contract with Larkin in which they were to: 1) follow Claimant's instructions in executing trades, properly handle the account in accordance with all applicable laws, rules, and regulations, and properly supervise Rimson & Co. and their brokers in their handling of Claimant's account. Claimant alleged that Respondent Larkin engaged in breach of contract in that: 1) they failed to follow Claimant's instructions in executing the Quaker trades, and instead purchasing speculative Twilight securities, 2) they failed to properly supervise and monitor the actions of Rimson Co. & their brokers, and 3) they failed to follow all applicable laws, rules, and regulations.

Claimant alleged that Respondents' were negligent in that they owed Claimant a duty of ordinary care which they breached by: 1) failed to follow Claimant's instructions in executing the Quaker trades; 2) purchased Twilight without authorization; 3) failed to properly supervise and Rimson & Co. and its brokers; and, 4) failed to follow all applicable laws, rules, and regulations.

Claimant alleged that Respondents' breached their fiduciary duty because although they did not have discretionary authority over Claimant's account, they assumed de facto control over his account, and failed to act in the best interest of Claimant. Claimant alleged that instead they acted only to further their

own monetary interests. Claimant alleged that Respondents' further breached their fiduciary duty because they: 1) failed to follow Claimant's instructions in executing the Quaker trades; 2) purchased Twilight for Claimant; 3) failed to properly supervise and monitor Rimson & Co. and its brokers; and, 4) failed to follow all applicable laws, rules, and regulations.

Respondent Emmett A. Larkin Co., Inc. maintained that their responsibility to the Claimant was met at all times. Respondent maintained that it provided record keeping and custodial services which it has done and continues to do. Respondent's maintained that the supervision of brokers and dealers is the responsibility of the SEC, the NASD, and other various exchanges and that as a clearing broker it has no authority to supervise the actions of brokers or come between brokers and their customers. Respondent maintained that Rimson & Co. was a market maker and, therefore, it never saw a transaction before it was completed.

Respondent Larkin offered the following affirmative defenses: 1) the Statement of Claim and each cause of action therein, fails to state facts sufficient to specify a cause of action against Larkin; and, 2) at all times relevant herein, Larkin exercised reasonable care and did not have knowledge of, and, in the exercise of reasonable care, could not have acquired knowledge of, any of the acts or transactions alleged and set forth in the Statement of Claim.

RELIEF REQUESTED

Claimant requested damages in the amount of \$1,044,000.00 comprised of \$44,000.00 in compensatory damages and Punitive Damages of \$1,000,000.00. Claimant requested pre-judgement interest on the above stated amount, that Respondents' be held jointly and severally liable for attorneys' fees, costs of this arbitration, and such other further relief as the panel deems just and fair.

Respondent Emmett A. Larkin & Co., Inc. requested that they be dismissed as a respondent in this matter and Claimant re-imburse Respondent Emmett A. Larkin & Co., Inc. the NASD Regulation, Inc. surcharge imposed as a result of the Statement of Claim. Respondent Emmett A. Larkin & Co., Inc. requested that in the event they are not dismissed they be allowed to submit a revised Statement of Answer and that Claimant be liable for attorney fees and the cost of this arbitration.

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 the NASD.

The panel made the following determinations concerning Respondents' M. Rimson & Co., Inc., Moshe Rimson, Alex D. Schindman, and Ed Veisman, who did not file Statements of Answer or Submission Agreements and who did not appear at the hearing in this matter:

- 1) Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
- 2) The panel found that Respondent M. Rimson & Co. was a NASD member, and respondents Moshe Rimson, Alex D. Schindman and Ed Veisman were associated persons thereto, at the time this controversy arose. Accordingly, the panel found personal jurisdiction over all Respondents pursuant to Rule 10201/10301 of the Code.

- 3) The panel found that Respondents were each required to file Statements of Answer and a Submission Agreements with NASD Regulation, Inc. pursuant to Rule 10314(b) of the Code. In this regard the panel found that the Statement of Claim was properly served upon all Respondents pursuant to Rule 10314(a) of the Code.
- 4) In addition, in accordance with Rules 10310, 10315, and 10316 of the Code, the panel found that NASD Regulation, Inc. provided Respondents with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Respondents whose absences were unexcused.

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 M. Rimson & Co. Inc., Emmett A. Larkin Company, Inc., Ed Veisman, Moshe Rimson and Alex D. Shindman are jointly and severally liable and shall pay to claimant Hans H. Ammann \$45,000.00 in actual damages.
2. Respondents M. Rimson & Co. Inc., Ed Veisman, Moshe Rimson and Alex D. Shindman are jointly and severally liable and shall pay to claimant Hans H. Ammann \$100,000.00 in punitive damages.
3. The parties shall bear their respective costs and attorneys fees.
4. All other relief requests are denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc., will retain the \$250.00 non-refundable filing fee previously paid by the Claimant and has assessed the following Forum Fees:

2 Sessions x \$1,000.00	= \$2,000.00
Minus claimant's \$1,000.00 deposit	= <u>\$1,000.00</u>
Total Outstanding Forum Fees	= \$1,000.00

Respondents M. Rimson & Co. Inc., Emmett A. Larkin Company, Inc., Ed Veisman, Moshe Rimson and Alex D. Shindman are jointly and severally liable for \$2,000.00 in forum fees. Therefore, the respondents shall pay to claimant Hans H. Ammann \$1,000.00 in reimbursement of the hearing session deposit and \$1,000.00 to NASD Regulation in satisfaction of outstanding forum fees.

Respondent Emmett A. Larkin Company is liable to NASD Regulation in the amount of \$500.00 under Rule 10333 for the applicable member surcharge associated with the filing of this claim.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS' SIGNATURES

I, Richard E. Lerner, 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.

Richard E. Lerner

Richard E. Lerner, Esq.
Public Chairperson

I, Anne Cugliani, 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.

Anne Cugliani
Public Panelist

I, Morris Levine, 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.

Morris Levine
Industry Panelist

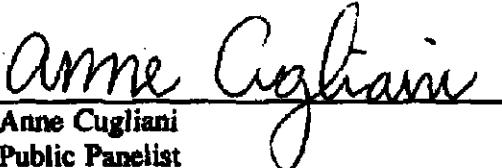
Date of Decision: September 3, 1997

ARBITRATORS' SIGNATURES

I, Richard E. Lerner, 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.

Richard E. Lerner, Esq.
Public Chairperson

I, Anne Cugliani, 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.


Anne Cugliani
Public Panelist

I, Morris Levine, 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

Morris Levine
Industry Panelist

Date of Decision: September 3, 1997

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Public Chairperson

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Morris Levine
Industry Panelist

Date of Decision: September 3, 1997