

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

James and Agnes Kane

vs.

96-01856

Name of Respondents

Bernard Herold & Co., Inc.
Theodore Madsen

REPRESENTATION

For Claimants James and Agnes Kane ("Claimants") appeared Simon S. Kogan, Esq., a sole practitioner located in New York, New York.

For Respondents Bernard Herold & Co., Inc. ("Bernard") and Theodore Madsen ("Madsen") (collectively referred to as "Respondents") appeared Milton R. Gleit, Esq., of the law firm McCarthy, Fingar, Donovan, Drazen & Smith, LLP located in New York, New York.

CASE INFORMATION

Statement of Claim filed on: January 26, 1996.

Claimant's Submission Agreement signed on: April 29, 1996.

Respondents filed a Joint Statement of Answer on: October 03, 1996.

Respondent Bernard's Submission Agreement signed on: October 01, 1996.

Respondent Madsen's Submission Agreement signed on: October 01, 1996.

HEARING INFORMATION

Hearing Date/Sessions:

September 16, 1997

- Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants stated that neither one of them has had any experience with the securities market and are not sophisticated investors. Claimants alleged that Respondent Madsen, an employee of Respondent Bernard, solicited them to buy stock in Communication Intelligence Corp. ("Communication"). Claimants further alleged that Respondent Madsen did not disclose to them the speculative nature and the risk involved in this investment. Claimants also alleged that Respondent Madsen promised that the investment would be profitable, and based on this information Claimants purchased 2,000 shares of Communication.

Claimants asserted that when the value of their stock increased they instructed Respondent Madsen to sell. Claimants further asserted that instead of selling their shares Respondent Madsen induced them to purchase additional shares, again without disclosing the nature of the investment. Claimants also asserted that on July 18, 1994, Communication filed for bankruptcy under Chapter 11 and that their investment is worthless. Claimants alleged that Respondent Madsen also induced them to purchase another security, Oppenheimer New York Tax-Exempt Fund A ("Oppenheimer"), again without disclosing the nature of the investment. Claimants further alleged that this investment also caused them to suffer extreme losses.

Claimants asserted that the securities recommended and purchased for their account by Respondent Madsen were unsuitable, violated federal securities laws, and violated rules of the NYSE and the NASD. Claimants also asserted that Respondent Madsen failed to disclose material relevant to the nature of their investments and the risks involved, and used fraudulent means to induce them to invest. Claimants asserted that Respondent Bernard is liable under the doctrine of respondeat superior.

Respondents maintained that Claimants opened a joint account, with Respondent Bernard under the direction of Respondent Madsen, in October 1989. Respondents further maintained that Claimants informed them that they had prior investment experience and had maintained accounts with Charles Schwab and Prudential Securities. Respondents maintained that in October 1992, Claimant Agnes Kane instructed Respondent Madsen to purchase shares of Communication, and in February 1993 Claimants instructed Respondent Madsen to purchase additional shares of Communication.

Respondents maintained that in March 1993, Claimant Agnes Kane instructed Respondent Madsen to sell the shares at not less than 7. Respondent Madsen maintained that the market never met this price, therefore, the sale was not executed. Respondents maintained that Claimants were provided with the prospectus and account application for Oppenheimer before Claimants purchased the fund. Respondent Madsen maintained that this purchase was unsolicited and against his recommendation. Respondents denied violating any securities laws, rules, and regulations.

RELIEF REQUESTED

Claimants James and Agnes Kane requested an award against the Respondents jointly and severally in an amount in excess of \$47,965.00, punitive damages in excess of \$50,000.00, plus reasonable attorneys' fees, the costs and disbursements of this proceeding, and all other such relief that the panel deems just and fair.

Respondents Bernard and Madsen requested that the Statement of Claim be dismissed in its entirety, plus that the costs and disbursements associated with this proceeding be assessed against Claimants and all other such relief that the panel deems just and equitable.

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(s) remain on file with the NASD.

At the hearing an oral amendment to the pleadings was made by Claimants. Claimants' attorney withdrew Claimants claim for purchase of Communications Intelligence, because the company survived

bankruptcy proceeding, they sold that stock and made a profit. As no objections were raised to this amendment, the panel accepted the withdrawal.

After the Claimants rested their case, the Respondents moved for a directed verdict against the Claimants, as they did not present any case. The panel denied this motion, subject to renewal.

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) Claimants James and Agnes Kane's claims against Respondents Bernard and Madsen are hereby dismissed in their entirety.
- 2) Claimants James and Agnes Kane's request for punitive damages are hereby denied.
- 3) Claimants James and Agnes Kane's request for attorneys' fees are hereby denied.
- 3) Each party is to bear its own costs.
- 4) All further relief requests are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$150.00 non-refundable filing fee deposited by Claimants and have assessed the following Forum Fees:

2 Hearing sessions x \$500.00	=	\$1,000.00
Total Forum Fees	=	\$1,000.00

- 1) Claimants be and hereby are liable and shall pay to NASD Regulation, Inc. the sum of \$1,000.00 representing 100% of the total forum fees assessed. Claimants previously deposited \$500.00 with the NASD, and therefore, Claimants shall pay the balance of \$500.00.
- 2) Respondent Bernard be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$300.00 representing the Member Surcharge assessed. Respondent Bernard previously deposited \$300.00 with the NASD, and therefore, does not owe the Member Surcharge.

Fees are payable to NASD Regulation, Inc..

ARBITRATORS' SIGNATURES

Romeo J. Barros

Romeo J. Barros, Esq.
Public Chairperson

Mitchell Rothbard
Public Panelist

William E. Smith
Industry Panelist

Date of Decision: October 31, 1997

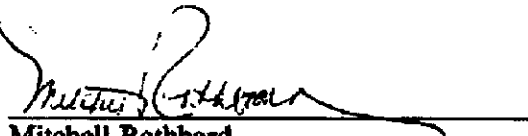
I, Romeo J. Barros, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Romeo J. Barros

Romeo J. Barros, Esq.

ARBITRATORS' SIGNATURES

Romeo J. Barros, Esq.
Public Chairperson




Mitchell Rothbard
Public Panelist

William E. Smith
Industry Panelist

Date of Decision: October 31, 1997

I, Mitchell Rothbard, 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.




Mitchell Rothbard

ARBITRATORS' SIGNATURES

Romeo J. Barros, Esq.
Public Chairperson

Mitchell Rothbard
Public Panelist



William E. Smith
Industry Panelist

Date of Decision: October 31, 1997

I, William E. Smith, 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.



William E. Smith