

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

William Michael Kenney

and

96-01937

Name of Respondents

Gilbert Marshall & Co., Inc.

Michael Usher

John B. Guyette

Richard J. Tyler

Gary Boldt

Thomas D. Meehan

Douglas A. Glaser

Daniel Lehl

REPRESENTATION OF PARTIES

William Michael Kenney ("Claimant") was represented by James A. Sigler, Esq., Granada Hills, California.

Gilbert Marshall & Co., Inc. ("Respondent") was represented by Michael Usher.

Michael Usher ("Respondent Usher") appeared *pro se*.

John B. Guyette ("Respondent Guyette") appeared *pro se*.

Richard J. Tyler ("Respondent Tyler") appeared *pro se*.

Gary Boldt ("Respondent Boldt") appeared *pro se*.

Thomas D. Meehan, Douglas A. Glaser and Daniel Lehl did not appear at the hearing of this matter.

CASE INFORMATION

The Statement of Claim was filed on or about May 6, 1996. Submission Agreement of Claimant William Michael Kenney was signed on November 29, 1996.

Statement of Answer was filed by Respondent Gilbert Marshall & Co., Inc. and Michael Usher on or about June 3, 1996. Submission Agreement of Respondent Gilbert Marshall & Co., Inc. was signed on June 4, 1996 by Michael Usher. Submission Agreement of Respondent Michael Usher was signed on June 4, 1996.

Statement of Answer was filed by Respondent John B. Guyette on or about May 28, 1996. Submission Agreement of Respondent John B. Guyette was signed on May 28, 1996.

Statement of Answer was filed by Respondent Richard J. Tyler on or about June 3, 1996. Submission Agreement of Respondent Richard J. Tyler was signed on June 3, 1996.

Statement of Answer was filed by Respondent Gary Boldt on or about June 3, 1996. Submission Agreement of Respondent Gary Boldt was signed on June 3, 1996.

HEARING INFORMATION

The hearing was held on Tuesday, April 15, 1997 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondents manipulated the price of the common stock of Sky Scientific, Inc. ("SSI") in a fraudulent scheme. Specifically, Claimant alleged that Respondents made material misrepresentations and omitted to state material facts regarding the performance and operations of SSI. Claimant also alleged that Respondents utilized boiler room techniques to sell common stock of SSI to investors. It was alleged that the actions of Respondents constituted violations of the NASD Rules of Fair Practice; breach of contract; breach of fiduciary duty; fraud; fraud on the market; negligence; and negligent supervision.

Respondents Gilbert Marshall and Usher denied the allegations set forth in the Statement of Claim. Specifically, Respondents Gilbert Marshall and Usher stated that Mr. Peritzman completed necessary financial and investment objective information on the Claimant's new account. Respondents Gilbert Marshall and Usher also stated that they did not solicit the Claimant to buy anything and that the statements in the Statement of Claim are total lies.

Respondent Tyler denied the allegations against him set forth in the Statement of Claim. Specifically, Respondent Tyler stated that he properly supervised each registered representative under his supervision.

Respondent Boldt denied the allegations asserted against him, if any. Specifically, Respondent Boldt stated that his responsibilities as a trader do not include the oversight of all trades executed by registered representatives of Gilbert Marshall. Respondent Boldt further stated that the trades executed through Gilbert Marshall represented a fraction of the shares traded in SSI on a given day. Finally, Respondent Boldt stated that he never communicated with or had a relationship with the Claimant.

Respondent Guyette stated that he did not supervise the Denver office of Gilbert Marshall and that he was not involved in the hiring of brokers and never was the Compliance Officer of Gilbert Marshall & Co., Inc.

RELIEF REQUESTED

Claimant requested a joint and several award of compensatory damages in the amount of \$13,211 as set forth in the Statement of Claim (in the event that compensatory damages must be limited to \$10,000 due to this claim being filed as a Simplified Arbitration, Claimant requested compensatory damages in the amount of \$10,000); annual interest at the rate of 10% on his investment from the date of his investment to the present; filing costs of \$150; attorneys' fees in the amount of \$13,900; punitive damages in an amount to be determined by the arbitrator; and such other and further relief as the arbitrator feels appropriate.

Respondents Gilbert Marshall and Usher requested that all claims for damages be denied and that the arbitrator order the Claimant to pay all expenses and justifiable damages to all Respondents and attorneys' fees.

Respondent Tyler requested that his name be removed from this matter and that he be awarded all expenses, costs and attorneys' fees since the claims asserted against him are frivolous and groundless.

Respondent Boldt requested that he be dismissed from this matter and that Claimant be ordered to reimburse him for any and all expenses incurred in this matter.

Respondent Guyette requested that he be dismissed from this matter.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrator has determined that Respondent Meehan has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrator has also determined that Respondent Meehan had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

This matter was originally filed pursuant to Rule 10302. The undersigned arbitrator requested that a hearing be scheduled.

- During the course of the hearing, Claimant withdrew the claims asserted against respondent Boldt.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive a conformed copy of the award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted against Respondents Gilbert Marshall & Co., Inc., Michael Usher, John B. Guyette, Richard J. Tyler and Thomas D. Meehan shall be and hereby are dismissed in their entirety.
2. The claims asserted against Respondents Douglas A. Glaser and Daniel Lehl shall be and hereby are dismissed without prejudice. This dismissal without prejudice is based upon the fact that these Respondents were not served with the Statement of Claim or had received due notice of the hearing in this matter.
3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter.

FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session. There were two (2) sessions x \$300 = \$600 in forum fees. Pursuant to Rule 10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution ("NASD") shall **retain** the non-refundable filing fee in the amount of \$75 and shall **retain** as forum fees the hearing session deposit in the amount of \$75 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant William Michael Kenney. Claimant William Michael Kenney shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$525 as the balance due for forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$100. **Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Dennis R. Frohlich, Esq.

Dennis R. Frohlich, Esq.

Public Arbitrator, Presiding Chair

April 16, 1997