

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Arie Seidler

96-02098

Name of Respondents

Commonwealth Associates  
William Burke

REPRESENTATION

For Claimant Arie Seidler ("Claimant") appeared John E. Lawlor, Esq., a sole practitioner located in Mineola, NY.

For Respondents Commonwealth Associates ("Commonwealth") and William Burke ("Burke") appeared their representative and in-house counsel, J.P. Wilson, Esq.

CASE INFORMATION

The Statement of Claim was filed on: May 14, 1996.

Claimant's Submission Agreement was signed on: May 08, 1996.

A Joint Statement of Answer was filed by Respondents' on: October 15, 1996.

Respondent Burke's Submission Agreement was signed on: October 21, 1996.

Respondent Commonwealth's Submission Agreement was signed on: October 16, 1996.

HEARING INFORMATION

Hearing Date/Sessions: July 23, 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' gave negligent advice, had negligent supervision, and breached their contract. Claimant alleged that Respondent Commonwealth had a duty to exercise effective supervision and control over Respondent Burke's handling of the Claimant's account. Claimant alleged that

Respondents' had an obligation to make sure that all transactions affecting the account were properly authorized. Claimant alleged that Respondents' failed to exercise diligence in dealing with his account and were negligent in giving advice regarding the account and in monitoring the account. Claimant alleged that Respondents' engaged in fraud by executing unauthorized transactions and by canceling duly executed transactions without authority.

Claimant alleged that Respondents' breached their fiduciary duty in that they traded Claimant's account without authority, disregarded Claimant's investment objectives, financial limitations, Claimant's express authorizations, and failed to properly advise Claimant in respect to the account and the maintenance thereof.

Respondents' denied all claims made by the Claimant. Respondents' maintained that Claimant has failed to state a cause of action, which includes allegations of sales practice violations and failure to supervise, and that they have, during all times relevant, acted in accordance with all applicable legal and regulatory requirements under federal and state laws and regulations. Respondent Commonwealth maintained that they acted in good faith and properly and diligently supervised Respondent Burke.

Respondents' offered the following affirmative defenses: 1) any damages allegedly suffered by Claimant have no causal relationship with any act committed by, or legally attributed to them; 2) all injuries allegedly suffered or sustained by Claimant, if any, were caused, in whole or part, by his negligence and by market forces outside Respondents' control; 3) Claimant failed to mitigate whatever losses, if any, he suffered; 4) Claimant through his own actions, conducts and deeds is estopped from maintaining this action; 5) Claimant is barred by the doctrines of ratification, affirmance, and waiver; and 6) Claimants claims are barred by the applicable statute of limitations.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$56,277.50, interest on this amount, and other such relief as the panel deems just and fair.

Respondents' requested that the Statement of Claim be dismissed in its entirety, all attorney's fees, the costs of this arbitration, and other such relief as the panel deems just and fair.

#### **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 NASD Regulation.

At the hearing oral amendments were made to the pleadings in which Claimant withdrew paragraph nineteen of the Statement of Claim and all claims against Respondent William Burke.

#### **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. Respondent Commonwealth Associates be and is hereby liable and shall pay to Claimant Arie Seidler compensatory damages in the amount of \$29,382.50.
2. Respondent Commonwealth Associates be and is hereby liable and shall pay to Claimant Arie Seidler simple interest if the award is not paid within thirty days of the date of the award. The interest rate shall be the prime rate as of date of this award.
3. After a hearing on the merits, the panel hereby directs NASD Regulation to expunge all references to NASD Regulation, Inc. case #96-02098 from the NASD Central Registration Depository records of respondent William Burke. In addition, the panel hereby directs respondent Commonwealth Associates to remove from its records all references of this matter to respondent William Burke.
4. The parties shall bear their respective costs and attorney's fees.
5. 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 \$150.00 non-refundable filing fee previously paid by the Claimant and have assessed the following Forum Fees:

2 Hearing Sessions x \$500.00	=	\$1,000.00
minus claimant's hearing session deposit	=	\$ 500.00
total outstanding forum fees	=	\$ 500.00

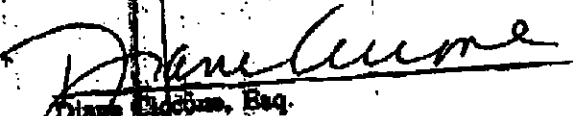
Respondent Commonwealth Associates shall pay 100% of the total forum fees assessed, therefore, Commonwealth Associates is hereby liable and shall pay to NASD Regulation, Inc. \$500.00 and shall pay \$500.00 to claimant for reimbursement of the hearing session deposit, representing the total amount of forum fees assessed.

The panel determined that NASD Regulation shall retain the \$500.00 adjournment fee previously submitted by claimant in satisfaction of an adjournment fee.


The panel further determined that NASD Regulation shall retain the \$300.00 member surcharge previously deposited by respondent Commonwealth Association pursuant to Rule 10333.

**ARBITRATORS' SIGNATURES**

I, Diane Ciccone, 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.

  
Diane Ciccone, Esq.  
Public Administrator

I, Jerome Lowengrub, CPA, 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.

  
Jerome Lowengrub, CPA  
Public Panelist

I, Michael Todd Clements, 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.

  
Michael Todd Clements  
Industry Panelist

Date of Decision: August 21, 1997

**ARBITRATORS' SIGNATURES**

I, Diane Ciccone, 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.

\_\_\_\_\_  
Diane Ciccone, Esq.  
Public Chairperson

I, Jerome Lowengrub, CPA, 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.

  
\_\_\_\_\_  
Jerome Lowengrub, CPA  
Public Panelist

I, Michael Todd Clements, 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.

\_\_\_\_\_  
Michael Todd Clements  
Industry Panelist

Date of Decision: August 21, 1997

ARBITRATORS' SIGNATURES

I, Diane Ciccone, 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.

Diane Ciccone, Esq.  
Public Chairperson

I, Jerome Lowengrub, CPA, 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.

Jerome Lowengrub, CPA  
Public Chairperson

I, Michael Todd Clements, 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.

*Michael Todd Clements*

Michael Todd Clements  
Industry Panelist

Date of Decision: August 21, 1997