

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

Robert R. and Jean A. Olen

Case No.
96-02248

Name of Respondents

Maidstone Financial Inc.
Mark Allen Lefkowitz
Michael Accurso

REPRESENTATION

For Claimants Robert R. and Jean A. Olen ("Claimants") appeared Christopher J. Calabrese, Esq. and David Stern, of Elliot, Stern, Calabrese & Higgins located in Rochester, New York.

For Respondents Maidstone Financial, Inc. ("Maidstone"), Mark A. Lefkowitz ("Lefkowitz"), and Michael Accurso ("Accurso") (collectively "Respondents") appeared Gersten, Savage, Kaplowitz & Curtin, LLP, located in New York, New York. As of March 2, 1998, Gersten, Savage, Kaplowitz & Curtin, LLP withdrew as attorneys for Maidstone. Therefore, Maidstone was without representation and did not appear in the proceeding. In addition, Claimants entered into a settlement agreement with Respondents Lefkowitz and Accurso prior to the hearing.

CASE INFORMATION

Claimants' Statement of Claim was filed on May 22, 1996. Claimants' Submission Agreement was signed on June 10, 1996.

A Joint Statement of Answer was filed by Respondents on September 9, 1996. Respondent Maidstone Financial Inc.'s Submission Agreement was signed on September 10, 1996. Respondent Mark A. Lefkowitz's Submission Agreement was signed on September 11, 1996. Respondent Michael Accurso's Submission Agreement was signed on September 11, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:

March 10, 1998

- Two Sessions

The hearing was conducted at the offices of NASD Regulation, Inc. located in Buffalo, New York.

CASE SUMMARY

Claimants alleged that, followed by a cold call in March 1994 when Mr. Olen was 70 years of age, they opened an account with Registered Representatives ("RR") Lefkowitz and Accurso at Maidstone Financial Inc. During the period of March 1994 through January 1995, Accurso directed transactions in the account. Claimants further alleged that Lefkowitz and Accurso maintained a course of conduct, whereby said RRs purchased low grade and speculative stocks solely for the purpose of generating commissions. In August 1995, Claimant alleged that, they received an expert opinion that the transactions in the account were wholly unsuitable given their age and investment needs. Claimants also asserted that, in the end, they had lost more than \$215,637, plus what their money should have earned them during the said period.

Claimants contended that the RRs breached their contractual and legal duties by providing Claimants with incompetent and self-interested professional services. Claimants stated that the RRs were of a professional industry, and, as such, were obligated to conduct their business in accordance with industry regulations and practices. Thus, the RRs violated their duties and obligations, thereby resulting in a breach of fiduciary duty. In addition, Claimants asserted that the Lefkowitz and Accurso breached their duties by recommending unsuitable investments and by misrepresenting the nature of those investments. The RRs also disregarded Claimants' financial objectives indicating a preference for a long term investment for their irreplaceable IRA funds. Furthermore, Claimants asserted that, by failing to reasonably supervise Lefkowitz and Accurso, Maidstone is liable for breaching its duty under the doctrine of respondeat superior. The Claimants concluded that, in addition to being vicarious liable Maidstone is also directly liable for Claimants' damages.

According to the Statement of Answer, Respondent maintained that Claimants, alleged to be elderly, unsophisticated, investors earning a combined annual income of less than \$20,000, willingly parted with almost \$700,000 over a seven month period to purchase stocks in the over-the-counter market. Respondent also maintained that Claimants did not dispute that all transactions were authorized. Specifically, Respondent stated that Claimants did not complain of any particular purchases or sales of stock, and, thus, in the absence of any specific allegation of wrongdoing, the statement of claim should be dismissed in its entirety.

Respondent added that Claimants simply lost money in their account in accordance with their own investment decisions, and that Accurso executed all trades in accordance with Claimants' explicit directive to him to "make some money." Respondent noted that Claimants never complained about the alleged mishandling of their account. Respondents alleged that Accurso recommended several stocks for purchase, which ultimately increased in value, however,

Claimants decided not to purchase those stocks.

RELIEF REQUESTED

Claimant requested a judgment of joint and several liability as against Respondents for: (1) out of-pocket losses in the amount of \$215,637; (2) market-adjusted damages; (3) interest on the sum of (1) and (2) above at 9%; (3) Claimant's filing fee, hearing session deposit, and all forum fees; (4) punitive damages; and (5) such other relief as the arbitration panel deemed just and proper.

Respondent requested that the arbitration panel dismiss the Statement of Claim 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.

Prior to the hearing, Claimants entered into a settlement agreement with Respondents Lefkowitz and Accurso.

The panel made the following determination concerning Respondent Maidstone, 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. In accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation, Inc. provided Respondent Maidstone 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 Respondent Maidstone, whose absence was 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. Respondent Maidstone be and hereby is liable and shall pay to Claimant the sum of \$150,000 in compensatory damages, plus interest accruing at a rate of 9% beginning on March 10, 1998.
2. Claimants' request for punitive damages is hereby denied.
3. Each party shall bear its respective costs, including attorney's fees.

4. All other requests for relief are hereby denied.

FORUM FEES

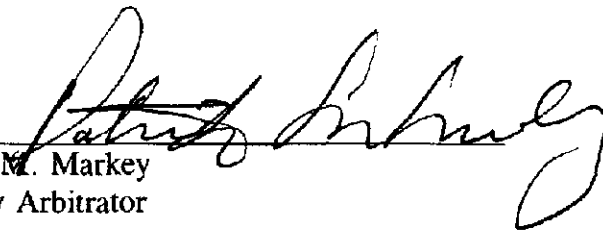
Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee previously submitted by Claimant, and the \$750.00 non-refundable postponement fee and \$350.00 member surcharge previously submitted by Maidstone. In addition, the arbitrators have assessed the following forum fees:

2 Hearing sessions x \$750.00 (Full Panel) = \$1,500.00

1. Maidstone is hereby liable for and shall pay the sum of \$1,500.00, representing 100% of the total amount of forum fees assessed. Claimants previously deposited \$750.00 with NASD Regulation, Inc. Therefore, Respondent shall reimburse Claimant for the amount of \$750.00, representing the hearing deposit.
2. Claimants are hereby liable and shall pay the sum of \$750.00, representing the postponement fee assessed on May 1, 1997. Claimants previously deposited \$300.00 with NASD Regulation, Inc. Therefore, Claimants shall pay balance of \$450.00.

Fees are payable to NASD Regulation, Inc.

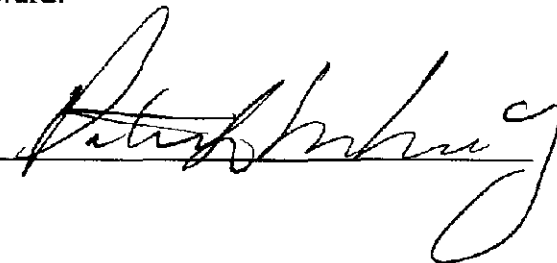
Arbitrators' Signatures



Patrick M. Markey
Industry Arbitrator

Date of decision: April 23, 1998

I, **Patrick M. Markey**, 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.



Name

Arbitrators' Signatures



Vincent J. Muffoletto
Public Arbitrator

Date of decision: April 23, 1998

I, **Vicent J. Muffoletto**, 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.



Name