

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Kenneth E. Johnson

96-02348

Name of Respondents

Investors Associates, Inc.
Kevin Coughlin
Thomas Re

Name of Third Party Respondent

Edwin Mishkin

REPRESENTATION

For claimant Kenneth Johnson ("claimant") appeared Carole Fern, Esq. of the law firm of Berlack, Israels, and Liberman located in New York, New York.

For respondent Investors Associates, Inc. ("IAI") appeared its representatives, Lawrence Gelber, Esq., in-house counsel, and David Sayid of the law firm of Sayid and Associates located in Hackensack, New Jersey.

For respondent Thomas Re ("Re") appeared his representative and counsel David Sayid, Esq. of the law firm of Sayid and Associates located in Hackensack, New Jersey.

Respondent Kevin Coughlin ("Coughlin") did not enter an appearance at the hearing.

The third party claim entered against respondent Edwin Mishkin, Esq. was withdrawn without prejudice by respondent Investors Associates, Inc. prior to the hearing on the merits.

CASE INFORMATION

Statement of Claim filed: June 3, 1996.

Claimant's Submission Agreement signed on: May 28, 1996.

Statement of Answer and Third Party Claim filed by respondent IAI on: October 7, 1996.

Respondent IAI's Submission Agreement signed on: November 8, 1996.

Respondent Coughlin did not file a Statement of Answer nor a properly executed Submission Agreement.

Respondent Re did not file a Statement of Answer nor a properly executed Submission Agreement.

Third Party respondent Edward Mishkin did not file a Statement of Answer nor a properly executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:	March 7, 1997	one session
Hearing Dates/Sessions:	March 17, 1997	three sessions
	March 18, 1997	two sessions

The hearings were conducted at the Ritz Carlton Hotel located at 3434 Peachtree Road in Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that he purchased a total of 15,500 unit of Panax Pharmaceutical Company ("PANXU") based upon the recommendations of respondent Re who at the time was a broker at the firm Hanover Sterling ("Hanover"). Claimant further alleged that his first purchase was for 500 units in November of 1994 and that his contact with Re was a result of an unsolicited phone call. Claimant also alleged that he purchased the other 15,000 units in January of 1995 because of Re's high pressure sales tactics. Claimant contended that on February 27, 1995, Hanover went out of business resulting in the freeze of its assets and a significant decline in the value of PANXU units. Claimant further contended that following the close of Hanover, Re advised him to contact respondent Coughlin of IAI as he would be handling the account thereafter.

Claimant asserted that Coughlin advised him that the shares were very volatile and that he should short the units. Claimant further asserted that Coughlin informed him that IAI would transfer the shares from Hanover within a week but failed to inform him that the disposition of Hanover's accounts would be a drawn out affair and that he should wait until the SIPC contacted him. Claimant also asserted that he relied on Coughlin's incomplete advice and shorted the units and subsequently discovered that he had to wire \$50,000.00 to IAI to cover the short sale because he had no other assets in his IAI account. Claimant contended that from March 10, through March 14, 1995, at IAI's recommendation, he purchased securities in an effort to recover some of his losses but found that on March 21, 1995 he had to wire IAI another \$80,000.00 to cover the short sale. Claimant further contended that on March 22, 1995 his IAI account incurred a "buy in" for 13,000 shares of PANXU at \$17.12 per share for a total cost of \$222,560.00. Claimant also contended that he protested this purchase since the market price for the security was between \$5-7 per share to which IAI informed him that Hanover's Trustee ordered that his short position had to be covered at the price the Trustee set.

Claimant alleged that on April 3 and 24, 1995, he was again forced to purchase shares of PANXU. Claimant further alleged that as a result of the above he suffered losses for which the respondents should be held liable.

Respondent IAI maintained that claimant's claim is based on a recommendation gone sour. Respondent further maintained that claimant makes no allegation such as misrepresentation or other breaches but merely states that the investment advice was bad. Respondent also maintained that claimant's election to purchase securities through Hanover was one over which it had no control or participation. Respondent also maintained that it has no knowledge concerning the purchase of shares through Hanover but is aware that it went out of business in February of 1995 followed by its clearing broker Adler Coleman ("Adler"). Respondent contended that it has no knowledge concerning the allegation that Re informed claimant that the account was transferred to Coughlin at IAI. Respondent further contended that it had not causal connection to the circumstances which prevented claimant from accessing his Hanover account or from liquidating his PANXU shares.

Respondent asserted that Coughlin did not represent that various components of the transaction would take specific amounts of time but did state what his experience in this area had been concerning the length of time certain transactions had taken. Respondent further asserted that Coughlin provided claimant with the reason why he believed the shares should be shorted and that claimant chose to follow his advice. Respondent further asserted that claimant made no allegations of heavy handed sales tactics, misrepresentations or other misconduct on the part of Coughlin.

Respondent maintained that because of Adler's bankruptcy proceeding, a SIPC Trustee was appointed, being Edwin Mishkin, who took the action of effectuating buy-in prices which were unrelated to the existing market prices. Respondent further maintained that those who held uncovered short positions, like claimant, incurred substantial losses due to the Trustee buy-in action. Respondent also maintained that its has contended in court papers that the Trustee's action related to the buy-in were unlawful and fraudulent. Respondent contended that the Trustee has admitted that he caused the buy-in, thus, IAI contends it should not be held liable.

Based on the above, respondent IAI filed a third party claim against Edwin Mishkin, Esq. but later withdrew the claim without prejudice.

RELIEF REQUESTED

Claimant requested \$152,216.00 in damages plus interest.

Respondent IAI requested that the claims be dismissed in their entirety plus reimbursement for costs, fees, expenses and reasonable attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings concerning respondent Re who did not file a Statement of Answer nor a Submission Agreement, but whose representative David Sayid, Esq. appeared at the evidentiary hearing. The panel also made the following rulings concerning respondent Coughlin, and who also failed to appear at the evidentiary hearing conducted in this matter and who did not file a Statement of Answer nor a Submission Agreement:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondents Coughlin and Re were members of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondents Re and Coughlin pursuant to Rule 10301 of the Code.
3. In view of (2) above, the panel found respondents Coughlin and Re were required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon respondent Coughlin and Re, pursuant to Rule 10314(a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided respondent Coughlin with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel therefore, determined to proceed with the hearing without respondent Coughlin, whose absence was unexcused.

The following motions were filed by respondent IAI prior to commencement of the hearing: 1) Adjournment request; 2) Reconsideration of Adjournment request; 3) Request for Summary Judgment; 4) Motion pursuant to Rule 10321(c) of the Code. The panel denied the Motions.

During the March 17, 1997 morning hearing session, arbitrator Carl Porter withdrew as arbitrator because of a conflict of interest with a witness called to testify by claimant. Arbitrator Edwin Barclay Coggan was immediately appointed and accepted by the parties present at the hearing.

Prior to the hearing on the merits, respondent Investors Associates, Inc. withdrew, without prejudice, its claims against Third Party respondent, Edwin Mishkin.

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.

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 Investors Associates, Inc. and Kevin Coughlin be and hereby are jointly and severally liable and shall pay to claimant Kenneth Johnson for \$143,404.00 in default and compensatory damages.
- 2) Respondents Investors Associates, Inc. and Kevin Coughlin be and hereby are jointly and severally and shall pay to claimant Kenneth Johnson simple interest at the rate of 9% per annum on the default and compensatory damages from March 22, 1995 to date of payment of the award.
- 3) Respondent Thomas Re is liable and shall pay to claimant Kenneth Johnson \$5,000.00 in compensatory damages.
- 4) Respondents Investors Associates, Inc. and Kevin Coughlin be and hereby are jointly and severally liable to claimant Kenneth Johnson for \$15,000.00 in attorney's fees. Respondents Investors Associates, Inc. and Kevin Coughlin shall pay directly to claimant's attorney, Carole Fern, Esq. and her law firm Berlack, Israels, and Liberman \$15,000.00 for claimant's attorney's fees.
- 5) The parties shall bear their respective costs.
- 6) All other relief requests are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation shall retain the \$200.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

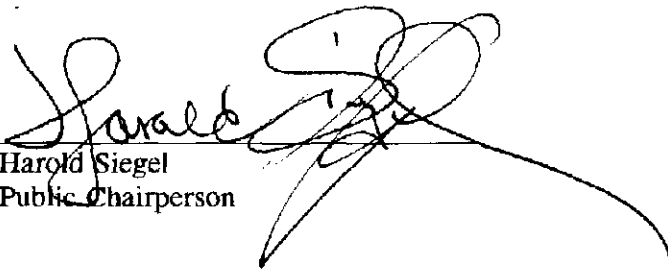
One Pre hearing session x \$300.00	= \$ 300.00
Five hearing sessions x \$750.00	= \$3,750.00
Minus claimant's \$750.00 deposit	= \$ 750.00
Total outstanding	= \$3,300.00

Claimant Kenneth Johnson be and hereby liable for the sum of \$2,025.00 representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation. Therefore, claimant shall pay \$1,275.00 to NASD Regulation.

Respondents Investors Associates, Inc., Kevin Coughlin, Thomas Re, be and hereby are jointly and severally liable for the sum of \$2,025.00 representing one-half of the total amount of forum fees assessed. Therefore, respondents Investors Associates, Inc., Kevin Coughlin, Thomas Re, shall pay to NASD Regulation \$2,025.00 in satisfaction of outstanding forum fees.

ARBITRATORS' SIGNATURES

I, Harold Siegel, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



Harold Siegel
Public Chairperson

I, Irving M. Shlesinger, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Irving M. Shlesinger
Public Arbitrator

I, Edwin Barclay Coggan, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Edwin Barclay Coggan
Industry Arbitrator

Date of Decision: May 2, 1997

ARBITRATORS' SIGNATURES

I, Harold Siegel, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Harold Siegel
Public Chairperson

I, Irving M. Shlesinger, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



Irving M. Shlesinger
Public Arbitrator

I, Edwin Barclay Coggan, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Edwin Barclay Coggan
Industry Arbitrator

Date of Decision: May 2, 1997

ARBITRATORS' SIGNATURES

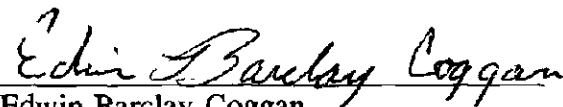
I, Harold Siegel, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Harold Siegel
Public Chairperson

I, Irving M. Shlesinger, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Irving M. Shlesinger
Public Arbitrator

I, Edwin Barclay Coggan, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.


Edwin Barclay Coggan
Industry Arbitrator

Date of Decision: May 2, 1997