

NASD REGULATION AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Hedy A. Kuzmack and The Michael S. Kuzmack and Hedy A. Kuzmack Trust

Case Number

96-02970

Name of Respondents

Edgar W. Brick
William B. Boyd, III
Edward C. Rorer
Gurney Sloan, Jr.
James Gay Hesser
Frank Stanton Moyer
Brick & Kyle Associates Inc.
Clifford B. Storms, Jr.
William L. Kufta
Thomas I. Florence
Barbara M. Kyle

REPRESENTATION

Claimants Hedy A. Kuzmack and The Michael S. Kuzmack and Hedy A Kuzmack Trust ("Claimants") were represented by Jeffrey Gery, Esq. of the law firm of Maddox, Koeller & Hargett, Indianapolis, IN.

Respondents Edgar W. Brick ("Brick"), Edward C. Rorer ("Rorer"), Gurney Sloan, Jr. ("Sloan"), James Gay Hesser ("Hesser"), Frank Stanton Moyer ("Moyer"), Brick & Kyle Associates Inc. ("Brick & Kyle"), Clifford B. Storms, Jr. ("Storms"), William L. Kufta ("Kufta"), Thomas I. Florence ("Florence"), and Barbara M. Kyle ("Kyle") were represented by Diana Vondra Carrig, Esq. of the law firm of Pepper, Hamilton & Scheetz, Philadelphia, PA.

Respondent William B. Boyd, III ("Boyd") was represented by Kenneth I. Trujillo, Esq. of the law firm of Trujillo Rodriguez & Richards, LLC, Philadelphia, PA.

CASE INFORMATION

Statement of Claim filed: July 9, 1996.

Amended Statement of Claim dismissing Respondents Storms, Kufta, Florence, Hesser, Kyle and Sloan filed: November 4, 1996.

Claimants' Response to Respondents' Statement of Answer (as requested by the Arbitration Panel) filed: March 12, 1997.

Claimant Hedy A. Kuzmack's (Ms. Kuzmack") Submission Agreement was signed on: June 28, 1996

Claimant The Michael S. Kuzmack and Hedy A Kuzmack Trust ("Trust") signed by John J. Urban, as Trustee under the Trust on: July 3, 1996

Statement of Answer by Respondents Brick, Rorer, Sloan, Hesser, Moyer, Brick & Kyle, Storms, Kufta, Florence, and Kyle filed: October 3, 1996.

Reply of Respondents Brick & Kyle, Brick, Rorer and Moyer in Further support of Their Motion to Dismiss: March 31, 1997.

Respondent Brick's Submission Agreement signed on: October 3, 1996

Respondent Rorer's Submission Agreement signed on: September 6, 1996

Respondent Sloan's Submission Agreement signed on: October 1, 1996

Respondent Hesser's Submission Agreement signed on: September 6, 1996

Respondent Moyer's Submission Agreement signed on: August 29, 1996

Respondent Brick & Kyle's Submission Agreement signed on: October 3, 1996

Respondent Storms' Submission Agreement signed on: September 6, 1996

Respondent Kufta's Submission Agreement signed on: October 2, 1996

Respondent Florence's Submission Agreement signed on: August 28, 1996

Respondent Kyle's Submission Agreement signed on: October 1, 1996

Statement of Answer by Respondent Boyd filed: October 3, 1996.

Respondent Boyd did not execute a uniform submission agreement.

HEARING INFORMATION

Pre-Hearing Conference: April 24, 1997 - One Session

Hearing Dates/Sessions: June 4, 1997 - Two Sessions
June 5, 1997 - Two Sessions
June 6, 1997 - One Session

Hearing Location: NASD Regulation, District Office, Cleveland, OH

CASE SUMMARY

Claimants alleged, among other things, that this case is about a broker stealing from his client and the failure of Respondents, as his employer, to reasonably supervise their employee. Claimants alleged that Respondents are liable for their failure to reasonably supervise under Ohio state securities law; are vicariously liable for their employee, Michael S. Kuzmack II's ("Mr. Kuzmack II") breach of fiduciary duty, negligent infliction of emotional distress, criminal conduct, and other breaches of duty; are liable for negligent supervision and negligent retention.

Claimants alleged that Respondents had a reasonable duty to supervise Mr. Kuzmack II, who was designated as Trustee and broker of Claimants' Trust. Respondents' duty required them to supervise Mr. Kuzmack II to make sure he managed the account properly and not for his sole benefit. Claimants alleged that Respondents breached this duty because the account statements indicate that the value of the account had deteriorated at a much greater pace than normal, and that such evidence should have reasonably put the Respondents on notice of irregular activity.

Claimants also alleged that Respondents are liable under Ohio common law agency rules because Mr. Kuzmack II's breach of fiduciary duty owed to Claimants occurred within the scope of his employment and because Respondents benefitted from Mr. Kuzmack II's sale of securities through the charge of commissions.

Claimants further allege that Respondents are liable for negligently retaining Mr. Kuzmack II as an employee as Respondents owed Claimants a duty of reasonable care to fire Mr. Kuzmack II after it became clear that he was stealing from his mother.

Claimants later amended their Statement of Claim to dismiss Respondents Storm, Kufta, Florence, Hesser, Kyle and Sloan. Claimants refined their allegations charging that Respondents are required to know and understand the functions of the Trust in order to fulfill their supervisory duties. Claimants alleged that Respondents' failure to know their client's objectives and their procedural failure to document the appropriate level of supervision is one of the factors that led to Mr. Kuzmack II's ability to steal Trust assets. Claimants further alleged that Respondents' supervisory manual and procedures regarding supervision of individuals and accounts are so general that they are per se unreasonable and ineffective in detecting irregularities and abuses.

Respondents moved to dismiss, maintaining, among other things, that Mr. Kuzmack II was acting as Claimants' trustee rather than an agent of Respondents, and that he acted in his own interest as opposed to that of his employer. Respondents maintained that as strangers to the Trust instrument, they had no duty and no right to interfere with Mr. Kuzmack II's dealings with the Trust. Absent a duty, Respondents stated that they cannot be found liable for negligent supervision nor negligent retention. Respondents maintained that only Brick, Rorer and Moyer had supervisory authority over Kuzmack, and that they had all properly exercised their

supervisory duties. Respondents further maintained that Claimants' allegation of negligent supervision must be dismissed because no private right of action exists under the Ohio Blue Sky Regulation. Respondents maintained that Claimants' claims are barred by the applicable statute of limitations.

RELIEF REQUESTED

Claimants requested the return of all the money that Mr. Kuzmack II stole from Claimants (of which the actual amount was to be established at the hearing through an expert witness), loss interest of 10% per year, attorneys' fees and costs of arbitration, including expert witness fees, expenses and accounting fees, and pre and post award interest at the statutory rate.

Respondents requested that the Claim be dismissed and that Respondents be awarded attorneys' fees and costs incurred in answering what they considered to be a frivolous claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Boyd did not file with NASD Regulation a properly executed submission to arbitration, but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure ("Code"), and is bound by the determination of the arbitrators on all issues submitted.

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. That Claimants' claim is denied in its entirety.
2. That the parties shall bear their respective costs, including attorneys' fees, except as forum fees are specifically addressed below.
3. That any and all requests for relief not specifically addressed are denied in their entirety.

FORUM FEES

Pursuant to Rule 10332[®] of the Code, the following Forum Fees are assessed.

(1 pre hearing conference with chairperson x \$300) + (5 hearing sessions x \$600) = \$3,300

Forum fees Assessed Against: Claimants to bear 50% of the forum fees and Respondents to bear 50% of the forum fees. Claimants are assessed forum fees in the amount of \$1,650; however Claimants are entitled to offset this fee with their hearing session deposit previously paid in the amount of \$750 so that the amount due from Claimants is \$900. Respondents Brick & Kyle, Brick, Boyd, Moyer and Rorer are jointly and severally assessed forum fees in the amount of \$1,650.

Fees are payable to NASD Regulation, Inc.

DATE

Concurring Arbitrators' Signatures

July 14, 1997

Lawrence M. Oberdank
Lawrence M. Oberdank, Esq. - Chairperson
Public Arbitrator

Edward F. Siegel, Esq. - Panelist
Public Arbitrator

Henry Ott-Hansen - Panelist
Industry Arbitrator

Date Award served by NASD Regulation:

July 16, 1997

FORUM FEES

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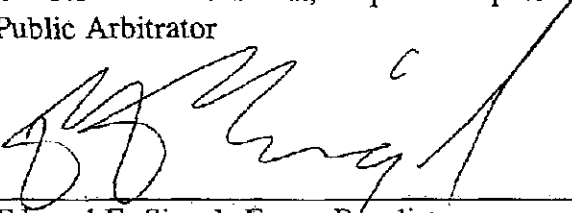
Fees are payable to NASD Regulation, Inc.

DATE

Concurring Arbitrators' Signatures

7/14/97

Lawrence M. Oberdank, Esq. - Chairperson
Public Arbitrator



Edward F. Siegel, Esq. - Panelist
Public Arbitrator

Henry Ott-Hansen - Panelist
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DATE

Concurring Arbitrators' Signatures

Lawrence M. Oberdank, Esq. - Chairperson
Public Arbitrator

Edward F. Siegel, Esq. - Panelist
Public Arbitrator

July 9, 1997

Henry Ott-Hansen
Henry Ott-Hansen - Panelist
Industry Arbitrator

Date Award served by NASD Regulation:

July 16, 1997