

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Duke & Co., Inc.

vs.

Case No.

96-03145

Name of Respondents

Millennium Securities Corp.
Cliff Sharfman

REPRESENTATION

For Claimant Duke & Co., Inc. ("Duke"), William Rotholz, Esq., in-house counsel at Duke located in New York, New York.

For Respondent Millennium Securities Corp. ("Millennium") and Cliff Sharfman (Sharfman"), Rick Cardillo, Esq., in-house counsel at Millennium located in New York, New York.

CASE INFORMATION

Duke's Statement of Claim and Request for Injunctive Relief was filed on July 19, 1996.
Duke's Submission Agreement was signed on July 22, 1996.

Millennium did not file a Statement of Answer or a signed Submission Agreement.

Sharfman's Statement of Answer was filed on May 21, 1997.
Sharfman's Submission Agreement was signed on May 27, 1997.

HEARING INFORMATION

Pre-Hearing Conference: July 1, 1998 - One Session - Full Panel

CASE SUMMARY

Duke alleged that Sharfman conspired with Millennium to encourage at least ten of Duke's registered representatives to join Millennium.

Sharfman maintained he did not encourage any of Duke's current or former employees to leave Duke and join Millennium.

RELIEF REQUESTED

Duke requested that its application for injunctive relief be granted in its entirety and that Duke be awarded damages in an amount to be determined at trial, but for no less than \$100,000.00 plus punitive damages of \$300,000.00.

Sharfman requested that Duke's claims be denied in their entirety and that he be awarded the costs of this arbitration, plus such other and further relief as the panel deems appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remains on file with the NASD Regulation.

The panel made the following determinations concerning Millennium who did not file a Statement of Answer or a Submission Agreement:

1. Pursuant to Rule 10101 of the *Code of Arbitration Procedure* (the "*Code*"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Millennium was a member of the NASD at the time this controversy arose. Accordingly, the panel found jurisdiction over Millennium pursuant to Rule 10201 of the *Code*.
3. The panel found that Millennium was required to file a Statement of Answer and Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the *Code*. In this regard, the panel found that the Statement of Claim was properly served upon Millennium pursuant to Rule 10314 (a) of the *Code*.

AWARD

After considering the pleadings, and the evidence presented at the pre-hearing conference, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. WHEREAS, this panel directed Claimant on June 28, 1998, to notify the NASD of its counsel and to appear by counsel at a pre-hearing conference scheduled for July 1, 1998, at 2:00 p.m. (Order attached); and

WHEREAS, Claimant failed to notify the NASD of the identity of its counsel or to appear by counsel (or pro se) at said conference,

IT IS HEREBY ORDERED that the claims asserted herein by Claimant Duke & Co., Inc. are dismissed pursuant to Rule 10305 of the *Code*.

2. All other requests are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the *Code* of Arbitration Procedure, Duke has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the *Code*, Millennium has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10205(c) of the *Code*, the arbitrators have determined that NASD Regulation will retain the \$500.00 non-refundable filing fee and the \$2,500.00 injunctive relief fee deposited by Duke and have assessed the following Forum Fees:

| | | |
|--|---|----------|
| 1 Pre-hearing conference (full panel) x \$750.00 | = | \$750.00 |
| Total Forum Fees | = | \$750.00 |

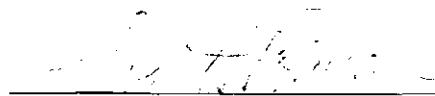
Duke be and hereby is liable for and shall pay the sum of \$750.00 representing the total forum fees assessed. Duke previously deposited \$750.00 with NASD Regulation, Inc., and, therefore, no remittance is due.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

| | | |
|------------------|---|----------------------|
| Eva Posman, Esq. | - | Industry Chairperson |
| Edith M. Gunn | - | Industry Arbitrator |
| Gimson A. Yee | - | Industry Arbitrator |

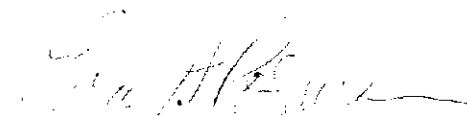
CONCURRING ARBITRATOR'S SIGNATURE



Eva Posman, Esq.
Chairperson - Industry Arbitrator

Date of decision: August 12, 1998

I, **Eva Posman, 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.

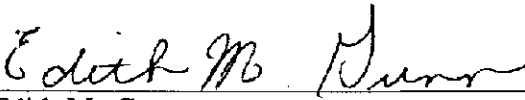


Eva Posman, Esq.

ARBITRATION PANEL

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| Eva Posman, Esq. | - | Industry Chairperson |
| Edith M. Gunn | - | Industry Arbitrator |
| Gimson A. Yee | - | Industry Arbitrator |

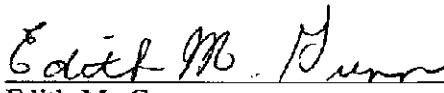
CONCURRING ARBITRATOR'S SIGNATURE



Edith M. Gunn
Industry Arbitrator

Date of decision: August 12, 1998

I, **Edith M. Gunn**, 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.

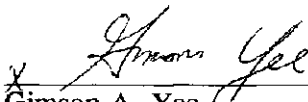


Edith M. Gunn

ARBITRATION PANEL

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| Eva Posman, Esq. | - | Industry Chairperson |
| Edith M. Gunn | - | Industry Arbitrator |
| Gimson A. Yee | - | Industry Arbitrator |

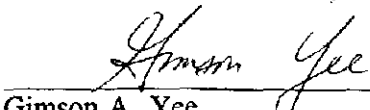
CONCURRING ARBITRATOR'S SIGNATURE



Gimson A. Yee
Industry Arbitrator

Date of decision: August 12, 1998

I, **Gimson A. Yee**, 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.



Gimson A. Yee