

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Walter T. Scudder

96-03909

Name of Respondents

**Michael Kijanka
Joseph Charles & Assoc., Inc.
Joseph Charles Visconti
Roy Thomas Amico
Arnold Levine
Geraldine A. Genco**

REPRESENTATION

For Claimant: Neal J. Blaher, Esq. of the Law Office of Neal J. Blaher, Orlando, Florida.

For Respondents: Arnold Levine, Esq. of Joseph Charles & Associates, Inc., Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed: September 3, 1996.

Amended Statement of Claim filed: October 24, 1996.

Claimant's Submission Agreement signed on: August 26, 1996.

Joint Statement of Answer and Counterclaim filed by Respondents on: December 6, 1996.

Respondent Michael Kijanka's Submission Agreement signed on: December 9, 1996.

Respondent Joseph Charles & Assoc., Inc.'s Submission Agreement signed on: December 5, 1996.

Respondent Joseph Charles Visconti's Submission Agreement signed on: December 5, 1996.

Respondent Roy Thomas Amico's Submission Agreement signed on: December 5, 1996.

Respondent Arnold Levine did not file an executed Submission Agreement.

Respondent Geraldine A. Genco's Submission Agreement signed on: November 12, 1996.

HEARING INFORMATION

On December 17, 1996, February 11, 1997 and November 7, 1997 telephonic pre-hearing conferences lasting three (3) sessions were conducted with the arbitration panel. In addition, on March 11, 1997 a telephonic pre-hearing conference lasting one (1) session was conducted with the Chairperson.

CASE SUMMARY

Claimant alleged that over a ten month period he purchased, based on Respondent Kijanka's recommendations, stocks that were unsuitable for him and that resulted in his losing more than \$35,000.00. Claimant further alleged that Respondent Kijanka had little experience in the brokerage industry when he was permitted by Joseph Charles & Associates, Inc. to engage in excessive and unsuitable trading activity in Claimant's account, thus evidencing deficiencies in supervision by Joseph Charles Visconti, Roy Thomas Amico, Arnold Levine and Geraldine A. Genco.

Respondents denied each and every allegation in the Statement of Claim and asserted the following affirmative defenses: the Claimant was a knowledgeable and experienced investor and the purchases were suitable; that Respondent Kijanka kept the Claimant properly informed and did not make any misrepresentations to the Claimant; and, that Claimant's losses were less than \$22,000.00.

RELIEF REQUESTED

Claimant requested rescission of the purchases that generated his losses, disgorgement of all commissions, interest, costs to arbitrate this matter, attorneys' fees, punitive damages and such other relief as the arbitrators deemed appropriate.

Respondents requested that the Statement of Claim be dismissed in its entirety, damages in the sum of \$300,000.00, attorneys' fees, costs to arbitrate this matter and such other relief as the arbitrators deemed appropriate.

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 originals remain on file with NASD Regulation, Inc.

On June 4, 1997 Respondents Joseph Charles Visconti, Roy Thomas Amico, Arnold Levine and Geraldine A. Genco were dismissed with prejudice pursuant to the Stipulation And Consent Withdrawing Parties:

On June 10, 1997 Claimants settled this matter with Respondents Kijanka and Joseph Charles & Associates, Inc.

On June 13, 1997 Respondents Joseph Charles Visconti and Roy Thomas Amico submitted an unopposed Motion to Expunge all references to this arbitration from their CRD records.

On July 7, 1997 Respondent Geraldine A. Genco submitted an unopposed Motion to Expunge all references to this arbitration from her CRD record.

ORDER

After considering the pleadings, the Motions to Expunge and the arguments proffered at the pre-hearing telephone conference conducted on November 7, 1997 the arbitration panel has ordered the following:

Respondent Joseph Charles Visconti's CRD records shall be expunged of any and all references to this arbitration.

Respondent Thomas Amico's CRD records shall be expunged of any and all references to this arbitration.

Respondent Geraldine Genco's CRD records shall be expunged of any and all references to this arbitration.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (three pre-hearing conferences x \$400.00 plus one pre-hearing conference x \$300.00).

1. Claimants are hereby assessed \$1,500.00 for which NASD Regulation, Inc. shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due in the sum of \$1,100.00.

2. NASD Regulation, Inc. shall retain the non-refundable filing fee of \$120.00 paid by the Claimants.

3. NASD Regulation, Inc. shall retain the member surcharge of \$200.00 paid by the Respondents.

4. Respondents are assessed, jointly and severally, \$500.00 representing the non-refundable counterclaim filing fee pursuant to Rule 10332(a) of the Code of Arbitration Procedure.

Fees are payable to National Association of Securities Dealers Regulation, Inc.

Concurring Arbitrators' Signatures

/S/

James F. Turner, III
Chairperson, Public Arbitrator

/S/

Patrick Davis, Esq.
Public Arbitrator

/S/

Daniel Calabria
Industry Arbitrator

2/9/98

Date of Decision: _____

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