

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Brian P. McMahon

96-04743

Name of Respondents

Kedem Capital Corporation
Paul Haney

REPRESENTATION

For Claimant Brian P. McMahon appeared John E. Lawlor, Esq., a sole practitioner located in Mineola, New York.

For Respondents Kedem Capital Corporation ("Kedem") and Paul Haney ("Haney") (collectively referred to as "Respondents") appeared Milton Gleit, of the law firm McCarthy, Fingar, Donovan, Drazen & Smith, L.L.P., located in White Plains, New York.

CASE INFORMATION

Statement of Claim filed on: October 11, 1996.

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

Respondents Joint Statement of Answer filed on: December 23, 1996.

Respondent Kedem's Submission Agreement signed on: December 17, 1996.

Respondent Haney's Submission Agreement signed on: December 17, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:	July 10, 1997	-	Two Sessions
	September 4, 1997	-	Two Sessions
	September 10, 1997	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged during 1994 through 1996 he relied solely on Respondents to properly advise and

manage his account in a professional and prudent manner, in accordance with Claimant's express authorizations and investment objectives. Claimant alleged that during this time Respondents managed his account with the sole purpose of generating commissions and traded with no discernable investment objective. Claimant further alleged that Respondent Haney's acts were carried out during his employment with Respondent Kedem and that these acts were carried out with the express, apparent or implied authority of Kedem. Claimant also alleged that Respondent Kedem is liable since Respondent Haney was under their control and supervision.

Claimant alleged that Respondents churned his account, violated Section 10-b of the Securities and Exchange Act of 1934, and committed common law fraud. Claimant alleged that Respondent Kedem was negligent in its supervision of Respondent Haney. Claimant further alleged that Respondents breached their contract, in that they failed to exercise due diligence in regards to his account. Claimant also alleged that Respondents breached their fiduciary duty.

Respondents maintained that all transactions in the account were consistent with Claimant's stated investment objectives. Respondents maintained that Claimant authorized all transactions in his account. Respondents maintained that many securities purchased were at the recommendation of Respondent Haney, but that Claimant at times effected transactions not recommended by Respondent Haney. Respondents further maintained that they did not violate any rules and/or regulations. Respondents denied Claimant's allegation that they breached their fiduciary duty.

Respondents offered the following affirmative defenses: the claims asserted by Claimant are barred by the statute of limitations and Section 8-319 of the Uniform Commercial Code; the actions complained of by Claimant have been ratified; Claimant fails to state a claim upon which relief can be granted; the Statement of Claim fails to state with necessary specificity factual allegations sufficient to support a fraud claim; claims are barred by the doctrines of laches, estoppel, and waiver; and Claimant controlled the account at all times and authorized all transactions effected therein.

RELIEF REQUESTED

Claimant Brian P. McMahon requested damages in the amount of \$190,722.12 and all other such relief that the panel deems appropriate.

Respondents Kedem Capital Corp. and Paul W. Haney requested that the Statement of Claim be dismissed in its entirety, plus all costs be assessed against Claimant and all other relief that the panel deems just.

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(s) remain on file with the NASD.

A motion was raised by the Respondents to dismiss at the end of Claimant's case, the panel denied this motion, but gave Respondents the right to refile this motion prior to the conclusion of the hearing.

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 Kedem Capital Corporation be and hereby is liable to Claimant Brian P. McMahon and shall pay compensatory damages in the amount of \$174,988.76, plus interest at 9% per annum accruing from May 01, 1996 to date payment is made.
- 2) Respondent Kedem Capital Corp. be and hereby is liable and shall pay 25% of the damages awarded to Claimant.
- 3) Respondent Paul W. Haney be and hereby is liable and shall pay 75% of the damages awarded to Claimant.
- 4) All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

6 Hearing sessions x \$750.00	=	\$4,500.00
Hearing Session Deposit	=	(\$ 750.00)
Balance Due NASD Regulation, Inc.	=	\$3,750.00

- 1) Respondent Kedem Capital Corporation be and hereby are liable and shall pay to NASD Regulation, Inc. the sum of \$937.50 representing 25% of the balance of forum fees due.
- 2) Respondent Kedem Capital Corp. be and hereby is liable and shall pay to Claimant the sum of \$187.50 representing 25% of the reimbursement of Claimant's hearing session deposit.
- 3) Respondent Paul W. Haney be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$2,812.50 representing 75% of the balance of forum fees due.
- 4) Respondent Paul W. Haney is hereby liable and shall pay to Claimant the sum of \$562.50 representing 75% of the reimbursement of Claimant's hearing session deposit.
- 5) Respondent Kedem Capital Corporation paid to NASD Regulation, Inc. the sum of \$350.00 representing the Member Surcharge assessed.

Fees are payable to NASD Regulation, Inc..

ARBITRATORS' SIGNATURES



William A. Mechmann, Esq.
Public Chairperson


Alexander Forti
Public Panelist


Barbara I. Glenns, Esq.
Industry Panelist


Date of Decision: October 28, 1997

I, William A. Mechmann, 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.


William A. Mechmann, Esq.

ARBITRATORS' SIGNATURES

William A. Mechmann, Esq.
Public Chairperson



Alexander Forti
Public Panelist

Barbara J. Glenns, Esq.
Industry Panelist

Date of Decision: October 28, 1997

I, Alexander Forti, 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.



Alexander Forti

ARBITRATORS' SIGNATURES

William A. Mechmann, Esq.
Public Chairperson

Alexander Forti
Public Panelist



Barbara J. Glenns, Esq.
Industry Panelist

Date of Decision: October 28, 1997

I, Barbara J. Glenns, 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.



Barbara J. Glenns, Esq.