

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Michael L. Richey, M.D., and  
David L. Shepard, M.D.,

Claimants,

v.

No. 96-05052

Gilbert Marshall & Company, Inc.,  
Michael Usher, John Guyette,  
Thomas Patrick Meehan,  
Dena Halfacre, Brian Byer,  
and Tom Bronzan,

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimants Michael L. Richey, M.D. and David L. Shepard, M.D. were represented by Michael L. Richey, M.D.

Respondents Gilbert Marshall & Company, Inc., Michael Usher, and John Guyette were represented by Michael Usher.

Respondent Tom Bronzan appeared pro se.

Respondents Thomas Patrick Meehan, Dena Halfacre, and Brian Byer did not appear in this matter.

### **CASE INFORMATION**

The Statement of Claim was filed on or about November 14, 1996.

Claimants' Submission Agreement was signed on February 14, 1996.

The Statement of Answer of Respondents Gilbert Marshall & Company, Inc., Michael Usher, and John Guyette was filed on or about April 8, 1997.

The Submission Agreement of Respondents Gilbert Marshall & Company, Inc., Michael Usher and John Guyette was signed on March 31, 1997.

The Statement of Answer of Respondent Tom Bronzan was filed on or about March 31, 1997.

The Submission Agreement of Respondent Bronzan was filed on or about March 27, 1997.

Post-Hearing Submissions were filed on or about April 13, 1998.

### **HEARING INFORMATION**

The telephonic pre-hearing conference was held on April 1, 1998 for one (1) session.

The hearing was held on April 6, 1998 for three (3) sessions in New Orleans, Louisiana.

### **CASE SUMMARY**

Claimants contended that Respondents recommended and sold highly speculative and risky stock of Sky Scientific, Inc. which was unsuitable based on their investment objectives. Claimants asserted that Respondents engaged in fraud and misrepresentation involving their failure to disclose the financial viability of Sky Scientific, Inc. and the risks associated with Sky Scientific, Inc., as well as Gilbert Marshall & Company's own involvement with the investment. Claimants also alleged that Respondents engaged in a fraudulent scheme to manipulate the price of Sky Scientific stock. Claimant maintained that Respondents engaged in a continuum of negligent and/or intentional acts which violated the various federal and state securities laws, statutes, and the rules and regulations of the NASD and NYSE.

Respondents alleged that Claimants were sophisticated, experienced and aggressive investors who understood and acknowledged the risks involved with Sky Scientific stock. Respondents contended that they made suitable recommendations in accordance with Claimants' expressed investment objectives, risk tolerance and net worth, as well as their prior investment history. Respondents maintained that they were fully informed of and accepted the market risks associated with each and every investment in their accounts. Respondents denied that they

manipulated the price of Sky Scientific stock. Respondents maintained that Claimants willingly elected to hold the positions at issue and thus implicitly assumed the market risk of loss associated with those decisions.

### **RELIEF REQUESTED**

Claimant Michael L. Richey requested an award of compensatory damages in the amount of \$75,035.00, interest at 10%, costs and attorney fees, as well as punitive damages, plus all further relief as the panel deems just and appropriate. Claimant David L. Shepard requested an award of compensatory damages in the amount of \$96,924.00, interest at 10%, costs and attorney fees, as well as punitive damages, plus all further relief as the panel deems just and appropriate.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of attorney fees and costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents Thomas Patrick Meehan, Dena Halfacre, and Brian Byer did not appear at the hearing. The undersigned arbitrators have determined that these Respondents have not received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would not proceed with respect to Claimants' claims against these Respondents pursuant to §10318 of the Code.

Respondent Tom Bronzan's Motion to appear at the hearing by telephone was granted.

Respondent Tom Bronzan was dismissed with prejudice by Claimants at the close of the hearing on the merits.

The Motion to Dismiss of Respondents Gilbert Marshall & Company, Inc., Michael Usher, and John Guyette was taken under advisement by the panel prior to the close of the hearing and is rendered moot by this award.

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 NASD Regulation, Inc. Office of Dispute Resolution.

### AWARD

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

- (1) The panel find that all claims are barred by applicable statutes of limitation. During the course of the hearing, Claimants testified that they received a copy of the annual report of Sky Scientific, Inc. in October 1994. Although the Claimants had notice of their claims against Respondents in October 1994, the Statement of Claim was not filed with the NASD until November 1996. Accordingly, it is hereby ordered that the Statement of Claim is dismissed in its entirety with prejudice.
- (2) That the request of Gilbert Marshall & Company, Inc., Michael Usher, and John Guyette for an award of their costs and expenses incurred in defending this action is hereby denied;
- (3) That Claimants Michael L. Richey, M.D. and David L. Shepard, M.D. shall reimburse Respondent Tom Bronzan for his costs incurred in attending the hearing by telephone; and
- (4) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

### FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were three (3) hearing sessions x \$750 = \$2,250 in forum fees. There was one (1) pre-hearing x \$300 = \$300 in forum fees. Total forum fees = \$2,550. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited by the Claimants.

Pursuant to §10332(c) of the Code, Respondents Gilbert Marshall & Company, Inc., Michael Usher, and John Guyette are jointly and severally liable for and shall pay forum fees in the amount of \$2,550 (total forum fees).

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures:

\s\ Ashley L. Belleau, Esq.  
Ashley L. Belleau, Esq.  
Chairperson  
Public Arbitrator

May 20, 1998  
Dated:

\s\ Kenneth A. Goodwin, Esq.  
Kenneth A. Goodwin, Esq.  
Panelist  
Public Arbitrator

May 21, 1998  
Dated:

\s\ Robert B. Bieck, Jr., Esq.  
Robert B. Bieck, Jr., Esq.  
Panelist  
Industry Arbitrator

May 20, 1998  
Dated:

For NASD Regulation use only:  
Date award served on parties:

May 21, 1998