

NASD REGULATION, INC. AWARD

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In the Matter of the Arbitration Between

Name of Claimants

Clifford Lamm  
Arthur Lamm

96-05274

Name of Respondents

Jameson, Dewitt and Associates, Inc.

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**REPRESENTATION**

For Claimants Clifford and Arthur Lamm ("Claimants") appeared Patrick W. Begos, Esq., of the law office of Molton and Meekins, located in New York, New York.

For Respondent Jameson, Dewitt, and Associates, Inc. ("Respondent") appeared Stewart Barnes, Esq., of the law office of Stites and Harbison, located in Louisville, Kentucky and Stewart E. Bland, of the law office of Borowitz & Goldsmith, located in Louisville, Kentucky.

**CASE INFORMATION**

Statement of Claim filed on: December 20, 1996.

Claimant Clifford Lamm's Submission Agreement signed on: November 19, 1996.

Claimant Arthur Lamm's Submission Agreement signed on: November 14, 1996.

Statement of Answer filed by Respondent on: January 24, 1997.

Respondent's Submission Agreement signed on: January 21, 1997.

**HEARING INFORMATION**

Hearing Dates/Sessions:	August 19, 1997	Two Sessions
	August 20, 1997	Two Sessions
	August 21, 1997	Two Sessions

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

### CASE SUMMARY

Claimants alleged that, from 1992 to 1996, Arlene Resnick ("Resnick"), a registered representative of Respondent, induced them to purchase Bennett Group Securities ("Bennett") by making intentional, reckless and negligent misrepresentations and omissions of material facts. Claimants alleged that Resnick never told them she was a representative of Respondent or that, until December 1994, Respondent was a subsidiary of the Bennett Group. Claimants further alleged that Resnick never informed them that, in 1993, the SEC made an inquiry into transactions of the Bennett Group and that, in 1994, a formal SEC investigation into the operations of the Bennett Group was initiated. Claimants maintained that they would not have invested in Bennett had they been provided with this information.

Claimants alleged that at no time did Resnick inform them of any risk in their investment or provide any negative information about the Bennett Group. Claimants alleged that Resnick told them their investment was insured, therefore, it was safe and conservative. Claimants alleged that, upon these assurances and the recommendations of Resnick, they continued to invest in Bennett by adding capital or rolling over securities that had matured. Claimants alleged that Resnick never informed them that, in January 1996, Bennett announced that they could only pay the interest portion of the payment and not the principle. Claimants alleged that they first became aware of a problem with Bennett by letter from Resnick, in April 1996, stating that the Bennett Group had filed for bankruptcy protection under Chapter 11 and that no further payments on principle or interest would be paid. Claimants alleged that when they asked for copies of the insurance policy that was protecting their investment Resnick could not provide the document.

Claimants alleged that Resnick's behavior violated the Securities Acts of 1933 and 1934, constituted common law fraud, negligence and breach of fiduciary duty. Claimants further alleged that, as supervisor to Resnick, Respondent also violated the Securities Acts, engaged in fraud, was negligent, failed to supervise Resnick and breached their fiduciary duty. Claimants alleged that at no time did Respondent disclose its relationship with the Bennett Group and allowed Resnick to sell these securities without disclosing this relationship to Claimants.

Respondent maintained that Claimants were not their customers and that no account documentation exists for them, therefore, Respondent is not liable to Claimants. Respondent maintained that they never participated, directly or indirectly, in any investment made by Claimants. Respondent maintained that Resnick became their representative in 1994 and that they had no knowledge of her relationship with Claimants.

### RELIEF REQUESTED

Claimants requested an award of money damages against Respondent for all losses and damages suffered as a result of the acts and transactions complained of herein in an amount to be determined by the arbitrators, but not less than \$313,000.00 in the aggregate, plus exemplary or punitive damages, costs and expenses in conducting this arbitration, including reasonable attorneys' fees, expert fees and other costs and disbursements and such other and further relief as the panel may deem just and fair.

Respondent requested that Claimants be awarded nothing in this matter, that this matter be dismissed, and any other such relief to which they are entitled.

**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 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. Respondent be and hereby is liable and shall pay to Claimants the sum of \$150,000 in compensatory damages without interest.
2. Claimants' request for punitive or exemplary damages is hereby denied.
3. Claimants' request for attorney fees is hereby denied.

**FORUM FEES**

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$200.00 non-refundable filing fee previously paid by Claimant and the \$350.00 Member Surcharge previously paid by Respondent and have assessed the following Forum Fees:

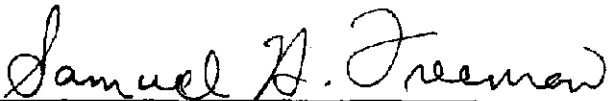
6 Hearing Sessions x \$750.00 = \$4,500.00

Total Forum Fees = \$4,500.00

1. Claimants be and hereby are liable for the sum of \$2,250.00, representing one-half of the forum fees assessed. Claimants previously deposited \$750.00 with NASD Regulation, Inc., and, therefore, Claimants shall pay the balance of \$1,500.00.
2. Respondent be and hereby is liable for and shall pay the sum of \$2,250.00, representing one-half of the forum fees assessed.

Fees are payable to the NASD, Regulation, Inc.

ARBITRATORS' SIGNATURES

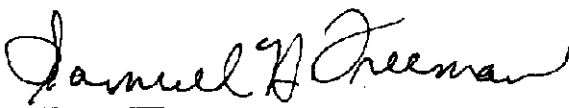
  
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Samuel H. Freeman, Esq.  
Public Chairperson

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John R. Mitchell, CPA  
Public Panelist

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Steven M. Bloom, Ph.D  
Industry Panelist

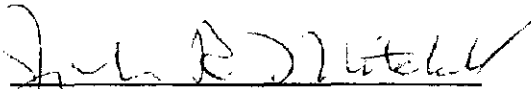
Date of Decision: January 28, 1998

I, Samuel H. Freeman, 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.

  
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Samuel H. Freeman, Esq.

ARBITRATORS' SIGNATURES

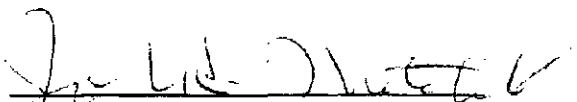
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Samuel H. Freeman, Esq.  
Public Chairperson

  
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John R. Mitchell, CPA  
Public Panelist

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Steven M. Bloom, Ph.D  
Industry Panelist

Date of Decision: January 28, 1998

I, John R. Mitchell, CPA, 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.

  
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John R. Mitchell, CPA

ARBITRATORS' SIGNATURES

Samuel H. Freeman, Esq.  
Public Chairperson

John R. Mitchell, CPA  
Public Panelist

Steven M. Bloom  
Steven M. Bloom, Ph.D.  
Industry Panelist

Date of Decision: January 28, 1998

I, Steven M. Bloom, Ph.D. 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.

Steven M. Bloom  
Steven M. Bloom, Ph.D.