

**NASD REGULATION, INC.
AWARD**

In the Matter of the Arbitration Between

Name of Claimants

**Gregory S. Parsons
Central Carolina ENT Center PA Profit Sharing Plan
Central Carolina Ear, Nose, Throat and Audiology Center**

96-05310

Name of Respondents

**Kensington Wells Incorporated
Elias Tacher
Sal Tacher
Adam Drew Levy
Marc A. Luxenberg
Stephen Vornea**

*Adam Drew Levy
Marc A. Luxenberg
Stephen Vornea*

REPRESENTATION

For Claimants Gregory S. Parsons ("Parsons"), the Central Carolina ENT Center PA Profit Sharing Plan (the "Plan"), and the Central Carolina Ear, Nose, Throat and Audiology Center (the "Center"), collectively "Claimants", appeared Edward H. Saunders, Esq., of the law offices of Page & Bacek located in Atlanta, Georgia.

For Respondent Kensington Wells Incorporated ("Kensington") appeared Martin Siegel, Esq., of the law offices of Berlack, Israels & Liberman LLP located in New York, New York.

For Respondents Elias Tacher ("E. Tacher"), Sal Tacher ("S. Tacher"), and Marc A. Luxenberg ("Luxenberg") appeared Peter Covington, Esq., of the law offices of Smith Helms Mulliss & Moore located in Charlotte, North Carolina.

For Respondent Stephen H. Vornea appeared Lori Dollinger of the law offices of Gusrae, Kaplan and Bruno located in New York, New York.

Respondent Adam Drew Levy ("Levy") appeared *pro se*.

CASE INFORMATION

Claimants' Statement of Claim was filed on November 26, 1996.

Claimants' Amended Statement of Claim was filed on June 19, 1997.

Parsons' Submission Agreement was signed on November 22, 1996.

Parsons, as Trustee for the Plan, executed a Submission Agreement on November 22, 1996.

Parsons, as Trustee for the Center, executed a Submission Agreement on November 22, 1996.

Respondents Kensington, E. Tacher, S. Tacher, Vornea, Luxenberg, and Levy, collectively "Respondents"), filed a Joint Statement of Answer on February 21, 1997.

Respondents' Joint Statement of Answer to the Amended Statement of Claim was filed on July 25, 1997.

Kensington, E. Tacher, S. Tacher, Luxenberg, Levy, and Vornea did not file executed Submission Agreements.

HEARING INFORMATION

Pre-Hearing Conferences:	October 7, 1997	One Session - Full Panel
	October 29, 1997	One Session
	January 14, 1998	One Session - Full Panel
	February 6, 1998	One Session - Full Panel

Hearing Dates/Sessions:	April 28, 1998	Two Sessions
	April 29, 1998	Two Sessions

The hearings were conducted at the South Park Suite Hotel located in Charlotte, North Carolina.

CASE SUMMARY

Claimants alleged that Respondents engaged in common law fraud and misrepresentation. Claimants also alleged that, in recommending and effecting purchases in their accounts, Respondents engaged in fraudulent practices and made numerous misrepresentations of material fact. Claimants further alleged that Respondents made the following representations: that Claimants' capital would be preserved; that Respondents would offer personalized financial management services to protect and preserve Claimants' assets; that Respondents would adhere to Claimants' investment goals; that the investments recommended would be suitable for Claimants' investment goals; and that all transactions were in accordance with NASD and NYSE rules and regulations. Claimants alleged that Respondents induced them to hold securities by making promises on price or by offering positions in new IPOs to make up the losses. Claimants asserted that Kensington was the market maker for the securities in the accounts, and that the trades were solicited. Claimants asserted that Respondents breached their contract and their fiduciary duty by recommending and purchasing investments that were unsuitable in light of Claimants' risk tolerance, financial situation, and investment objectives. Claimants further alleged that Kensington failed to supervise its employees, and failed to supervise Claimants' accounts and the investments therein. Claimants further alleged that the actions of Respondents violated the South Carolina Uniform Securities Act.

Respondents maintained that Parsons was a sophisticated investor, who had an investment portfolio of approximately \$1,000,000.00 and net worth of over \$2,000,000.00. Respondents maintained that Parsons' investment goals were growth and speculation, and that Parsons personally researched all investments made in the accounts. Respondents asserted that of the four accounts maintained at Kensington, three were for Parsons personally. Respondents further asserted that as Trustee for the Plan, Parsons was responsible for overseeing all financial and investment matters associated with the Plan's account. Respondents asserted that the prospectus for each investment was provided to Parsons and clearly disclosed the risks involved. Respondents maintained that they did not make false and fraudulent warranties and representations to Claimants, engage in unsuitable trading or engage in high pressure sales tactics. Respondents further maintained that they did not breach any agreement with Claimants, and did not fail to abide by the firm's written supervisory procedures, practices and in-house compliance manuals. Respondents maintained that they did not breach any fiduciary duty and did not disregard Claimants' investment objectives, financial limitations and express authorizations. Respondents further maintained that they did not engage in pre-arranged trading or in any other way manipulate or attempt to manipulate the market.

RELIEF REQUESTED

Claimants requested:

- (a) Damages in the sum of \$1,368,582.50, plus interest; and
- (b) Such other and further relief as the Panel deems just and proper, including exemplary damages in the sum of \$1,000,000.00 and all filing fees and disbursements.

Respondents requested that the Statement of Claim be dismissed with prejudice, and that they be awarded costs, expenses, attorneys' fees and such other and further relief as the Panel deems just and proper.

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 remains on file with the NASD.

On January 14, 1998, respondent Kensington filed a petition for Bankruptcy in the United States Bankruptcy Court for the Southern District of New York ("the Bankruptcy Court").

Bankruptcy counsel for Kensington subsequently filed an Order to Show Cause in the Bankruptcy Court which sought, among other things, a Temporary Restraining Order staying this action against the remaining individual respondents. The Bankruptcy Court denied the motion for Temporary Restraining Order on January 30, 1998.

On February 8, 1998 the Panel issued an Order which granted Claimants' Motion for Sanctions against E. Tacher, S. Tacher, Levy and Luxenberg, for failure to comply with several of the panel's previous orders on discovery. The February 8, 1998 Order struck all liability defenses

of those respondents.

By letter dated February 27, 1998, Claimants dismissed, with prejudice, their claims against Steven Vornea.

On April 6, 1998, the Panel issued an Order which denied the Motion of E. Tacher, S. Tacher, and Luxenberg to Reconsider and/or Vacate the February 8, 1998 Order, and denied their Motion for Leave to File a Third-Party Claim. The April 6, 1998 Order also held in abeyance until the hearing Respondent Levy's Motion to Vacate the February 8, 1998 Order, denied Respondent Levy's Motion to Adjourn, and denied Claimants' Motion that the Panel enter an Award prior to the hearing date.

Claimants dismissed, with prejudice, their Claims against Respondent Adam Levy at the hearing.

The Panel made the following determinations concerning E. Tacher, S. Tacher, Levy, Luxenberg and Vornea, who did not file Submission Agreements:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the Panel found subject matter jurisdiction over this entire controversy.
2. The Panel found that E. Tacher, S. Tacher, Levy, Luxenberg, and Vornea were persons associated with a member of the NASD at the time this controversy arose. Accordingly, the Panel found personal jurisdiction over E. Tacher, S. Tacher, Levy, Luxenberg and Vornea pursuant to Rule 10301 of the Code.
3. The Panel found that E. Tacher, S. Tacher, Levy, Luxenberg and Vornea were required to file Submission Agreements with NASD Regulation pursuant to Rule 10314(b) of the Code.

AWARD

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

1. Respondents S. Tacher, E. Tacher, and Luxenberg are hereby jointly and severally liable and shall pay to Claimants compensatory damages in the amount of \$1,200,000.00, with interest from the date of this Award at the North Carolina legal rate.
2. Respondents S. Tacher, E. Tacher, and Luxenberg are hereby jointly and severally liable and shall pay to Claimants attorneys' fees in the amount of \$250,000.00.
3. Respondents S. Tacher, E. Tacher and Luxenberg are hereby jointly and severally liable and shall pay to Claimants the sum of \$1,250.00 as reimbursement of the

non-refundable filing fee and hearing session deposit previously paid by Claimants.

4. All other requests are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure Kensington has paid to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee deposited by Claimants and have assessed the following Forum Fees:

1 Pre-hearing conference x \$300.00	=	\$ 300.00
3 Pre-hearing conferences (with Panel) x \$1,000.00	=	\$3,000.00
4 Hearing sessions x \$1,000.00	=	\$4,000.00

Total Forum Fees = **\$7,300.00**

1. S. Tacher, E. Tacher, and Luxenberg are hereby jointly and severally liable for the sum of \$7,300.00 representing the total forum fees assessed. Claimants previously deposited \$1,000.00 with NASD Regulation, Inc., and therefore, S. Tacher, E. Tacher and Luxenberg are jointly and severally liable for and shall remit the \$6,300.00 remaining balance to NASD Regulation, Inc.

2. S. Tacher, E. Tacher, and Luxenberg are hereby jointly and severally liable for and shall pay to Claimants the sum of \$1,250.00 as provided for in the "Award" section.

ARBITRATION PANEL

David Brooks Adcock, Esq.	-	Public Chairperson
David Brooks Westwater, Jr., Esq.	-	Public Arbitrator
James R. Shields	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE




David Brooks Adcock, Esq.
Chairperson - Public Arbitrator

Date of decision: June 25, 1998

ARBITRATION PANEL

David Brooks Adcock, Esq.	-	Public Chairperson
David Brooks Westwater, Jr., Esq.	-	Public Arbitrator
James R. Shields	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



David Brooks Westwater, Jr., Esq.
Public Arbitrator

Date of decision:

June 25, 1998

ARBITRATION PANEL

David Brooks Adcock, Esq.	-	Public Chairperson
David Brooks Westwater, Jr., Esq.	-	Public Arbitrator
James R. Shields	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


James R. Shields
Industry Arbitrator

Date of decision: June 25, 1998