

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Peter Gruenberg

96-05427

Name of Respondents

John Kim  
John N. Salerno  
Joseph F. Roberts, Inc.  
Israr Nasir

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REPRESENTATION

Claimant Peter Gruenberg ("Claimant") was represented by Carl N. Duncan, Esq., Duncan, Blum & Associates, Bethesda, MD.

Respondent John Kim ("Kim") was represented by M. David Sayid, Esq., Sayid & Associates, Hackensack, NJ.

Respondent John N. Salerno ("Salerno") did not appear.

Respondent Joseph F. Roberts, Inc. ("JFR") did not appear.

Respondent Israr Nasir ("Nasir") was represented by Martin J. Gofberg, Securities Arbitration Centers, Inc., Fort Lauderdale, FL.

CASE INFORMATION

The Statement of Claim was filed on December 6, 1996.  
An Amended Statement of Claim was filed January 9, 1997.  
A Second Amended Statement of Claim was filed March 3, 1997.  
Claimant's Uniform Submission Agreement was signed February 28, 1997.

Kim's Statement of Answer was filed May 26, 1996.  
Kim did not file an executed agreement to arbitrate.

Salerno did not file an Answer nor an executed agreement to arbitrate.

JFR did not file an Answer nor an executed agreement to arbitrate.

Nasir's Statement of Answer was filed April 25, 1997.  
Nasir's Amended Statement of Answer was filed July 14, 1997.  
Nasir's Uniform Submission Agreement was signed April 25, 1997.

7/15/96

### HEARING INFORMATION

Pre-Hearing Dates/Sessions: August 27, 1997/one session

Hearing Dates/Sessions: October 14, 1997/two sessions

Hearing Location: ANA Hotel  
Washington, D.C.

### CASE SUMMARY

Claimant alleged that Kim, Salerno and Nasir, employed by JFR, engaged in unauthorized transactions, the unauthorized close out of Claimant's account and associated misappropriation of assets from the account, price manipulation and false transactions. Claimant alleged that Kim had been instructed to sell Claimant's positions in SERFIN (a Mexican bank) at \$5.83, the price quoted by Kim, but the sale was not executed when directed and thus was finally sold at \$5.25 per share. In addition, Claimant alleged that during the first week of April 1996, Kim persuaded Claimant to authorize the purchase of 2,000 shares Cayman Water Co., Ltd. ("Cayman"), an IPO which JFR was bringing to the market. Following the purchase, Claimant contended that Nasir repeatedly called to try to induce Claimant to purchase an additional 6,000 shares of Cayman at \$8.00 in the after market, followed by an additional 12,000 shares of Cayman at \$8.50, also in the after market, but Claimant repeatedly refused because he could not afford transactions of that nature at that point in time. Claimant asserted that when he asked how Nasir could know the after market price before the IPO date, Nasir replied that was the way JFR operated. Claimant alleged that a few days after the repeated telephone calls by Nasir, he received a confirmation for the 18,000 shares of Cayman. Claimant further alleged that he directed Nasir to reverse the unauthorized transactions, Nasir told him not to worry, that it would be taken care of. Claimant asserted that he repeatedly told Kim and Nasir that he wanted the transaction purchasing the 18,000 shares of Cayman reversed. Claimant alleged that when he returned from a business trip he discovered that JFR, Kim, Salerno and Nasir had sold the 18,000 shares of Cayman (not reversed the unauthorized transactions as he had directed) and liquidated Claimant's account, including the original 2,000 shares of Cayman. Claimant authorized and Claimant's Money Market Fund.

Respondent Kim denied all allegations of wrong-doing as asserted in Claimant's Statement of Claim. Kim further denied that Claimant directed him to sell SERFIN. Kim maintained that not only did he not attempt to induce Claimant to purchase shares in Cayman, in fact, Claimant continuously badgered Kim to increase Claimant's allocation to 2,000 shares. Kim maintained that he and Nasir were not associates or on a team, but rather were two individual brokers employed at JFR. Kim maintained that there has never been any allegation of unauthorized trading in Claimant's account and that Claimant demanded and authorized the 18,000 shares of Cayman in the after market. Kim maintained that on April 8, 1996, Claimant called him to tell him that he had no problem with the 2,000 shares of Cayman he originally purchased, or the 6,000 aftermarket shares at \$8.00 but that he would need time to pay for the 12,000 aftermarket shares at \$8.50 and pleaded with Kim to get him an extension to pay for the shares. Kim maintained that Claimant's account was liquidated, by JFR's clearing firm, upon nonpayment of the Cayman shares. Kim raised the affirmative defenses of assumption of risk; failure to state a cause of action upon which relief can be granted; waiver and estoppel; ratification; contributory negligence; a failure to mitigate damages and that any relief sought by Claimant is barred by the doctrine of "unclean" hands.

Respondent Nasir denied the allegations asserted against him in the Statement of Claim. Nasir maintained that he was a salaried employee of JFR and assigned as a sales assistant to Kim. Nasir maintained that

Kim informed him that Claimant definitely wanted the original 2,000 shares of Cayman but was unable to afford the additional 6,000 and 12,000 aftermarket shares. Nasir maintained that as he was not licensed at the time, Kim executed all transactions in Claimant's account and Nasir was merely a conduit of communication between Kim and Claimant. Therefore, Nasir denied any liability for alleged losses in Claimant's account.

Respondents Salerno and JFR did not file Answers to the Statement of Claim.

#### **RELIEF REQUESTED**

Claimant requested damages of \$23,681.00, plus attorney's fees.

Respondent Kim requested that the Statement of Claim be dismissed.

Respondent Nasir requested that the Statement of Claim be dismissed, professional fees and expenses of \$5,548.40 be assessed to Claimant, and that all reference to this arbitration be expunged from Nasir's record with the Central Registration Depository ("CRD").

Respondents Salerno and JFR did not request relief.

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

The panel determined that Respondent Salerno had been properly served with the Statement of Claim pursuant to Rule 10314 of the Code of Arbitration Procedure ("Code") and that Salerno had received notice of the hearing pursuant to Rule 10315 of the Code as Salerno confirmed that he had received the Statement of Claim, as well as the notice of the Initial Prehearing Conference, in a telephone call to the NASD Regulation on August 8, 1997 and August 11, 1997. Respondent Salerno failed to file a properly executed agreement to arbitrate but is required to submit to arbitration pursuant to Rule 10301 of the Code, and is therefore bound by the rulings and determinations of the panel.

The panel further determined that Respondent Joseph F. Roberts, Inc. had been properly served with the Statement of Claim pursuant to Rule 10314 of the Code as the certified mail serving the Claim to Respondent Joseph F. Roberts, Inc. had not been returned by the U.S. Postal Service. Notwithstanding Respondent Joseph F. Roberts, Inc.'s failure to file a properly executed agreement to arbitrate, they are required to submit to arbitration pursuant to Rule 10301 of the Code, and thus is bound by the rulings and determinations of the panel.

Notwithstanding Respondent Kim's failure to file a properly executed agreement to arbitrate, he is required to submit to arbitration pursuant to Rule 10301 of the Code, and is therefore bound by the rulings and determinations of the panel.

The parties in attendance at the hearing 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. That Respondents JFR, Salerno and Kim are jointly and severally liable to and shall pay to Claimant \$17,182.00.
2. That Respondents JFR, Salerno and Kim are jointly and severally liable to and shall reimburse Claimant \$400.00 for the hearing session deposit submitted to the NASD Regulation.
3. That the claims as to Respondent Nasir are denied.
4. That Respondent Nasir's request for expungement of references to this arbitration from his CRD records is denied.
5. That each party shall bear its own costs and expenses with the exception of the Forum Fees as specified below.
6. That any and all relief not specifically addressed herein are denied.

### OTHER COSTS

Pursuant to Rule 10333, Respondent JFR is assessed a member surcharge of \$200.00.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions x \$400.00 = \$800.00

Forum Fees are assessed to Respondents Joseph F. Roberts, Inc., Kim and Salerno, jointly and severally. Respondents Joseph F. Roberts, Inc., Kim and Salerno will receive credit for the \$400.00 hearing session deposit submitted by Claimant and ordered to be reimbursed directly to Claimant by Respondents Joseph F. Roberts, Inc., Kim and Salerno. Therefore, Respondents Joseph F. Roberts, Inc., Kim and Salerno have a net assessment due of \$400.00.

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

77500

DATE

CONCURRING ARBITRATORS' SIGNATURES

10/27/97

Edgar J. Bellinger  
Edgar J. Bellinger, Presiding  
Public Arbitrator

Robert S. Rodriguez  
Robert S. Rodriguez  
Public Arbitrator

Margaret M. Werneth  
Margaret M. Werneth  
Industry Arbitrator

Date Decision Served by NASD Regulation:

October 31, 1997

7/10/97

DATE

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10-27-97

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Public Arbitrator

Oct 27, 1997

Margaret M. Werneth  
Margaret M. Werneth  
Industry Arbitrator

Date Decision Served by NASD Regulation:

October 31, 1997