

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Gregory Koester

96-05439

Name of Respondent

Patrick J. Sullivan

REPRESENTATION

For Claimant Gregory Koester ("Claimant") appeared Richard M. Gelb, Esq., of the law firm Gelb & Gelb, LLP, located in Boston, Massachusetts.

For Respondent Patrick J. Sullivan ("Respondent") appeared Philip M. Giordano, Esq., of the law firm Giordano & Champa, located in Boston, Massachusetts.

CASE INFORMATION

Statement of Claim was filed on December 6, 1996.

Claimant's Submission Agreement was signed on December 2, 1996.

Statement of Answer was filed by Respondent on January 30, 1997.

Respondent's Submission Agreement was signed on January 30, 1997.

HEARING INFORMATION

Pre-Hearing Conference:	October 10, 1997	-	Panel
Hearing Dates/Sessions:	November 17, 1997	-	Two Sessions
	November 18, 1997	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that Respondent intentionally misrepresented and omitted material facts regarding the securities he solicited him to purchase and failed to recommend suitable investments. Claimant further alleged that, at the time, he was twenty four years old, earned approximately \$30,000.00 a year as a software engineer, had approximately \$14,000.00 in a mutual fund, and had no investment experience. Claimant also alleged that the investments Respondent recommended were three speculative securities, Consolidated Technology Group, LTD., Sanyo Industries, Inc. and AFGL International, Inc.

Claimant asserted that Respondent's actions violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, Massachusetts General Law chapter 110A, and Massachusetts General Law chapter 93A. Claimant further asserted that Respondent's actions constituted breach of contract, breach of fiduciary duty, fraud, negligence, and violations of NASD Rules of Fair Practice.

Respondent maintained that, during his first phone call to Claimant, he introduced himself and inquired as to whether Claimant would be interested in starting a portfolio and what his investment experience was. Respondent further maintained that he informed Claimant of the risks involved in investing in stocks and sent him a company brochure, a newsletter and a business card. Respondent also maintained that a few weeks later he again phoned Claimant, and discussed his risk tolerance and investment objectives. Respondent asserted that Claimant approved all transactions and received monthly newsletters and stock updates. Respondent further asserted that he updated Claimant on his holdings and spoke to him about diversifying his portfolio. Respondent further asserted that he met with Claimant and reviewed his current portfolio and went over other investment opportunities. Respondent also asserted that Claimant never expressed dissatisfaction with Respondent's recommendations or the handling of his account.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$28,876.00, punitive damages, and interest. Claimant also requested that all forum fees be allocated to Respondent.

Respondent requested that the Statement of Claim be dismissed in its entirety.

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.

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 deter-

mination as follows:

1. All claims against Respondent are dismissed in their entirety.
2. Claimant's request for punitive damages is denied.
2. The parties shall bear their respective costs, including attorneys' fees.
3. All other claims are denied.

FORUM FEES

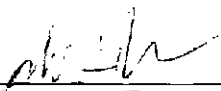
Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$100.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

1 pre-hearing conference (with panel) x \$400.00	= \$ 400.00
4 hearing sessions x \$400.00	= <u>\$1,600.00</u>
Total Forum Fees	= \$2,000.00

1. Claimant is hereby liable for the sum of \$1,000.00, representing one-half of the total forum fees assessed. Claimant previously deposited \$400.00 with NASD Regulation, Inc., and, therefore, Claimant shall pay the balance of \$600.00.
2. Respondent is hereby liable and shall pay the sum of \$1,000.00, representing one-half of the total forum fees assessed.
3. Respondent is hereby liable and shall pay the sum of \$400.00, representing a postponement fee.

Fees are payable to NASD Regulation, Inc.

Arbitrators' Signatures



Joseph Scardino, Esq.
Chairperson-Public Arbitrator

Richard Chapin
Public Arbitrator

Maurice J. Skoler
Industry Arbitrator

Date of decision: March 17, 1998

Arbitrators' Signatures

Joseph Scardino, Esq.
Chairperson-Public Arbitrator



Richard Chapin
Public Arbitrator


Maurice J. Skoler
Industry Arbitrator

Date of decision: March , 17 , 1998

Arbitrators' Signatures

Joseph Scardino, Esq.
Chairperson-Public Arbitrator

Richard Chapin
Public Arbitrator



Maurice J. Skolger
Industry Arbitrator

Date of decision: March 17, 1998