

## ARBITRATION AWARD

### NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

John A. and Cheryl A. Lund

97-00085

Name of Respondents

Nicholas James Mavrakes; and  
Rickel & Associates, Inc.

### REPRESENTATION

For Claimants: John A. Lund and Cheryl A. Lund ("Lund") were represented by David H. Zimmer, Esq. of Potomac, Maryland.

For Respondents: Rickel & Associates, Inc. ("Rickel") was represented by Leonard F. Lesser, Esq., of Schneck, Weltman Hashmall & Mischel LLP, located in New York, New York, but did not appear at hearing. Nicholas James Mavrakes ("Mavrakes") represented himself, but did not appear at hearing.

### CASE INFORMATION

Statement of Claim filed: January 8, 1997.

Claimants' Submission Agreement signed on: December 17, 1996.

Statement of Answer filed by Respondent Rickel on: February 19, 1997.

Respondent Rickel's Submission Agreement signed on: February 25, 1997 by Kenneth D. Rickel, Chairman, Rickel & Associates, Inc.

Statement of Answer filed by Respondent Mavrakes on: February 20, 1997.

Respondent Mavrakes did not file an executed submission agreement.

### HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: February 9, 1998 for One (1) session.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimants alleged that Respondents misrepresented and induced the purchase of stocks which were unsuitable given the Lunds' investment objectives and goals. Based upon these allegations, Claimants asserted claims for fraudulent nondisclosure; negligent misrepresentation; breach of fiduciary duty; and failure to supervise.

Respondent Rickel denied any liability, alleging that Claimants' account was acquired as part of the purchase of the assets of South Richmond Securities, Inc. and that only three transactions occurred while the account was maintained at Rickel and after a new account form was signed which provided for higher risk investments. In addition, Rickel asserted several affirmative defenses.

Mavrakes denied the material allegations of the Claim, alleging that Mr. Lund was an astute investor who wanted to trade speculatively in his account and who directed all trades in his account. In addition, Mavrakes asserted that all material facts were discussed with Lund prior to the trades and that the Lunds made money in the account before Lund voluntarily moved the account from South Richmond.

### **RELIEF REQUESTED**

Claimants requested entry of an award against Respondents for actual damages of not more than \$50,000.00; punitive damages; reasonable attorneys' fees; interest and costs.

Respondent Rickel requested that the claims be denied in their entirety; they be awarded the costs of their defense and for such other relief as the panel deemed proper.

Respondent Mavrakes requested that the claim be denied.

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

Respondent Mavrakes did not file an executed submission agreement, but as an associated person of a member firm when the dispute arose, is required to submit to arbitration pursuant to Section 10301 of the NASD Code of Arbitration Procedure. Furthermore, Respondent Mavrakes did not appear at hearing, but filed an answer to the Statement of Claim. Pursuant

to Section 10318 of the Code, the panel determined that Mavrakes received due notice of the hearing and that the hearing would continue in his absence.

By letter dated February 6, 1998, the Office of Dispute Resolution was advised that Respondent Rickel and Claimants had settled their dispute. The claim would continue against Mavrakes.

### **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 Nicholas James Mavrakes is liable and shall pay to the Claimants, John A. Lund and Cheryl A. Lund, the sum of \$34,000.00 as actual damages;
2. The claims for punitive damages are denied;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

### **OTHER COSTS**

Pursuant to Section 10333, Respondent Rickel & Associates, Inc. is liable for and shall pay to the sum of \$300.00 as the member surcharge.

### **FORUM FEES**

Pursuant to Section 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$500.00 per session = \$500.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$150.00 non-refundable claim filing fee and, as forum fees, the \$500.00 hearing session deposit previously deposited by the Claimants, John A. Lund and Cheryl A. Lund. Respondent Nicholas James Mavrakes is liable for and shall pay to the Claimants, John A. Lund and Cheryl A. Lund, the

sum of \$650.00 as reimbursement of the filing fee and forum fee paid by Claimants.

Concurring Arbitrators' Signatures

Name

Date

/s/ Bradford S. Allen, Esq.

February 18, 1998

Bradford S. Allen, Esq.

Public Arbitrator

Chairperson

/s/ Joseph O. Kostner, Esq.

February 20, 1998

Joseph O. Kostner, Esq.

Public Arbitrator

/s/ Kent Lawrence, Esq.

February 25, 1998

Kent Lawrence, Esq.

Public Arbitrator

For ODR Use Only/Date of Decision: March 3, 1998