

NASD AWARD

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

John A. Schiavone

97-06026

Name of Respondents

Investors Associates, Inc  
Glenn Lavender

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**REPRESENTATION**

Claimant John A. Schiavone ("Claimant") represented himself.

Respondent Investors Associates, Inc. ("Investors") was not represented at the hearing.

Respondent Glenn Lavender ("Lavender") was represented by Robert Bertsch, Esq., Port Washington, NY.

**CASE INFORMATION**

Statement of Claim filed: December 23, 1997.

Claimant's Submission Agreement signed on: December 23, 1997.

Investors neither filed a Statement of Answer nor a Submission Agreement.

Statement of Answer filed by Lavender on: January 23, 1998.

Lavender's Submission Agreement signed on: January 23, 1998.

**HEARING INFORMATION**

Pre-Hearing Date/Sessions: May 7, 1998 - one session with the Panel

Hearing Dates/Sessions: June 29, 1998 - two sessions

Hearing Location: ANA Hotel, Washington, DC

**CASE SUMMARY**

Claimant alleged that Lavender, while employed at Investors, contacted him in October 1996 via a cold call. Claimant alleged that Lavender initially made money for Claimant's account but that he ultimately lost money due to Lavender's deceptive practices. Claimant alleged that Lavender did not initially mention the fact that Investors was a market maker in most of the securities that he was recommending. Claimant alleged that he was never informed of the fact that Investors often charged a markup on shares in which it was a market maker. Claimant alleged that Lavender invested more of his money than he had

approved on certain investments. Claimant alleged that Lavender engaged in unauthorized transactions without his consent and, in fact, in direct opposition to his directions. Claimant alleged that Lavender refused to sell shares even when directed to do so by Claimant. Claimant alleged that Lavender did not provide him with written information about companies in which he invested in IPO's for Claimant's account. Claimant alleged that Lavender failed to place or execute limit orders as instructed by Claimant.

Lavender denied all allegations of wrongdoing asserted in Claimant's claim. Lavender specifically maintained that Claimant authorized and directed the execution of all transactions in Claimant's account. Lavender maintained that all transactions were carried out in conformity with all applicable rules, regulations, industry standards, and practices. Lavender maintained that the recommendations he made were reasonably based and suitable in light of Claimant's stated investment objectives.

#### **RELIEF REQUESTED**

Claimant requested total damages in the amount of \$34,097.88, broken down as follow. Claimant requested \$1419.00 as compensation for an undisclosed markup. Claimant requested \$2500 in interest to cover the capital that was borrowed to finance purchases. Claimant requested \$350.00 as compensation for an undisclosed markup on another transaction. Claimant requested \$4625.00 as compensation for shares that were not traded as represented by Lavender. Claimant requested \$375.00 as compensation for shares that were traded at a different price than represented by the broker. Claimant requested \$6550.00 as compensation for trades not executed by Lavender. Claimant requested \$18,278.98 as compensation for shares that were initially purchased without his knowledge or consent and later sold without his knowledge or consent.

Lavender requested that Claimant's Statement of Claim be dismissed in its entirety. Lavender requested that he be reimbursed for his costs and expenses. Lavender requested such other and further relief as is 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 originals remain on file with NASD Regulation, Inc.

NASD Regulation made numerous efforts to serve Investors with notice of this case at : 411 Hackensack Avenue, Hackensack, NJ 07601-6328. Pursuant to Rule 10301 of the NASD Code of Arbitration Procedure, the Panel exercised its jurisdiction over Investors. Notwithstanding Investors' failure to file a uniform submission agreement or an answer, Investors is bound by the Panel's rulings and determinations herein.

#### **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 Claimant John Schiavone's claim is denied in its entirety.
2. That the parties shall bear their own costs and attorneys' fees, except as Forum Fees are addressed herein.

3. That any and all relief not specifically addressed above is denied in its entirety.

FORUM FEES

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

(1 pre-hearing session with the Panel x \$400.00) + (2 hearing sessions x \$400.00) = \$1200.00 minus Claimant's hearing session deposit of \$400.00 = \$800.00 balance due to NASD Regulation, Inc.

Claimant Schiavone is assessed forum fees of \$600.00. Claimant Schiavone is entitled to offset this amount with his hearing session deposit of \$400.00. Claimant Schiavone shall pay to NASD Regulation, Inc. \$200.00.


Respondent Lavender is assessed forum fees of \$600.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.


DATE SIGNED

Concurring Arbitrators' Signatures

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Virginia S. Carson, Esq., Chairperson  
Public Arbitrator

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Paul Davis Pearlstein, Esq., Panelist  
Public Arbitrator

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Louis Paul Sitnik, Panelist  
Industry Arbitrator

Date Award Served by NASD Regulation:

August 4, 1998