

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

Olga Bezprozvannaya and Sofia Shevel, JTWROS

vs.

Case No.
97-06053

Name of Respondents

Robert Thomas Securities, Inc.
Timur Yakhin
Barron Chase Securities
Dean Vernoia

REPRESENTATION

For Claimants Olga Bezprozvannaya ("Bezprozvannaya") and Sofia Shevel ("Shevel") (collectively "Claimants") appeared Aviva Kriss Stark, Esq., of the firm Kriss Stark & Associates, located in Brooklyn, New York, and Janice L. Malecki, Esq., with law offices in New York, New York.

For Respondents Robert Thomas Securities, Inc. ("Robert Thomas") and Dean Vernoia ("Vernoia") appeared George L. Guerra, Esq., of Eagle Asset Management, Inc., located in St. Petersburg, Florida.

Respondent Timur Yakhin ("Yakhin") appeared *pro se*.

Respondent Barron Chase Securities ("Barron Chase") entered into a settlement agreement with Claimants prior to the commencement of the hearing. Therefore, no representative appeared at the hearing on behalf of Barron Chase.

CASE INFORMATION

Claimants' Statement of Claim was filed on December 29, 1997.

Claimant Bezprozvannaya's Submission Agreement was executed by Maria Ivenitsky, attorney-in-fact, on August 22, 1997.

Claimant Shevel's Submission Agreement was signed on April 23, 1997.

Respondents Robert Thomas and Vernoia's Joint Statement of Answer was filed on April 7,

1998.

Respondent Robert Thomas' Submission Agreement was signed on March 10, 1998.

Respondent Vernoia's Submission Agreement was signed on March 31, 1998.

Respondent Yakhin's Statement of Answer was filed on March 16, 1998.

Respondent Yakhin's Submission Agreement was signed on March 16, 1998.

Respondent Barron Chases' Statement of Answer and Motion to Dismiss was filed on May 18, 1998.

Respondent Barron Chases' Submission Agreement was signed on June 29, 1998.

HEARING INFORMATION

Pre-Hearing Conferences:	September 8, 1998	-	1 session
	February 26, 1999	-	1 session
Hearing Dates/Sessions:	March 11, 1999	-	2 sessions
	March 12, 1999	-	2 sessions
	May 10, 1999	-	2 sessions
	May 11, 1999	-	2 sessions

The pre-hearing conferences were conducted telephonically. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that, in October, 1994, Yakhin cold-called Shevel and Claimants' agent, Maria Ivenitsky ("Ivenitsky") to solicit their business and convinced them to invest at Baron Chase, promising them a low-risk, conservative investment strategy. Claimants asserted that, in December, 1994, they transferred their account to Barron Chase. Claimants contended that Yakhin's real intention was to gain their confidence and churn their account in order to generate commissions through the rapid purchase and sale of high-risk, low grade, and unsuitable securities. Claimants alleged that, from November, 1994 through April, 1995, Yakhin engaged in unauthorized trading and deliberate transition into risky investments, without their knowledge and in contravention to their repeated requests for low-risk investments. Claimants maintained that, since they were unsophisticated investors who did not know how to read and understand the monthly statements and confirmations, they did not know that Yakhin was misrepresenting the nature of the investments to them. Claimants further maintained that they did not know that Yakhin had deceived them into signing margin and/or option agreements since he claimed that their required signatures were mere formalities.

Claimants asserted that, in February, 1995, Yakhin induced them to transfer their account to Robert Thomas, the brokerage firm where he now worked. Claimants further asserted that it took them over a year to understand that Yakhin was taking advantage of them. Claimants maintained that Yakhin was able to trade \$542,973.57 within the first twelve months at Robert

Thomas on an initial investment of approximately \$38,000.00, thereby generating \$8,569.34 in commissions. Claimants alleged that, on March 28, 1996, they discovered the fraud and enormous losses in their account and confronted Yakhin, who eventually confessed that he had used their account to play the market and generate commissions. Claimants maintained that Yakhin then promised that he would return the money and executed a promissory note for \$29,155.00 to Shevel. Claimants alleged that when they complained to Yakhin's supervisor, Vernioia, he refused to believe that Yakhin had embezzled their money.

Respondent Robert Thomas and Vernioia maintained that Claimants' primary objective with their account was growth. Robert Thomas and Vernioia further maintained that, as a result, and as reflected in their new account form, Claimants were fully aware that, in order to achieve their growth objective, they had to bear the risk when investing in equities. Robert Thomas and Vernioia also asserted that, although Claimants' account declined in value, there were virtually no losses of any significance in their account. Robert Thomas and Vernioia alleged that, with respect to the excessive trading in their account, Claimants were also fully aware of the transactions which were undertaken because they were provided with trade confirmations and Claimants or their agent, Ivenitsky, spoke with Yakhin on a regular basis. Robert Thomas and Vernioia maintained that they had no first-hand knowledge of the promissory note which Yakhin allegedly executed in favor of Shevel. Robert Thomas and Vernioia further maintained that, even if Yakhin did execute a promissory note, it would be outside the scope of his employment since Robert Thomas never signed any such written agreement.

Respondent Yakhin maintained that, despite Claimants' allegations that they opened a joint account, he spoke with Bezprozvannaya, only, on November 16, 1994 and opened an individual account for her. Yakhin further maintained that he never spoke with Shevel. Yakhin further maintained that, only after he moved to Robert Thomas did Bezprozvannaya inform him that she would like to add her niece, Shevel, to the account as a joint holder. Yakhin asserted that, at all times while he was handling Claimants' account, he kept close contact with Bezprozvannaya, executed all solicited and unsolicited orders strictly in accordance with Bezprozvannaya's orders, and that Bezprozvannaya was aware of all the gains and losses in the account. Yakhin alleged that Claimants were fully aware that they were signing margin and option agreements and that the interpretation of the November 3, 1994 fax from him were incorrect. Yakhin contended that, since he had never spoken to Shevel, Claimants' allegations that he confessed to Shevel that he had used their account to play the market to generate a commission was incorrect. Yakhin alleged that, contrary to Claimants' assertions, the promissory note was not for his personal investment and, in fact, there is no record of money ever being withdrawn by the broker as per Robert Thomas monthly account statements over the entire period of time in their account. Yakhin further alleged that the promissory note was executed for a business venture which he was attempting to engage in, but which eventually failed.

Respondent Barron Chase maintained that it had no knowledge of Shevel or Ivenitsky since it transacted only with Bezprozvannaya. Barron Chase asserted that, therefore, it cannot have any liability to Shevel or Ivenitsky. Barron Chase contended that Bezprozvannaya specifically and expressly authorized all transactions, which were suitable and consistent with her stated Barron Chase account objectives. Barron Chase further contended that Bezprozvannaya failed to complain about the transactions after receiving confirmations and account statements. Barron

Chase joined and adopted the allegations of the Statement of Answer of Respondent Yakhin as to the actual facts and circumstances presented.

RELIEF REQUESTED

Claimants requested judgment against the Respondents, jointly and severally, for (i) compensatory damages in an amount to be established at the hearing, but presently estimated in excess of \$40,000.00, (ii) punitive damages in excess of \$400,000.00, (iii) reasonable attorneys' and expert fees incurred in pursuing this proceeding, (iv) average S&P 500 interest rate of 16% on the initial investment from inception of investment accounts, (v) costs and disbursements, (vi) disgorgement of all commissions, and (vi) such other further relief as the arbitrators deem just and proper.

Respondent Robert Thomas and Vernoia requested that the claims against them be dismissed.

Respondent Yakhin requested a judgment in his favor.

Respondent Barron Chase requested a dismissal of the claim with prejudice and an award of its reasonable attorneys fees and costs as against the Claimants.

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 NASD Regulation, Inc.

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. Respondents Robert Thomas and Yakhin are hereby jointly and severally liable and shall pay to Claimants, collectively, the sum of \$14,194.00, without pre-award interest;
2. Respondents Robert Thomas and Yakhin may each recover from the other contribution of any amount of the award in excess of 50% thereof paid by either such party to Claimants;
3. Respondent Vernoia is not liable to Claimants and all claims against him are dismissed in their entirety;
4. All parties shall bear their own costs, including attorneys' fees; and

5. All other claims are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") Robert Thomas and Barron Chase have each paid NASD Regulation, Inc. the \$1,500.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that NASD Regulation, Inc. will retain the \$200.00 non-refundable filing fee paid by Claimants and have assessed the following Forum Fees:

1 pre-hearing conference x \$300.00	=	\$ 300.00
1 pre-hearing conference (with full panel) x \$750.00	=	\$ 750.00
8 hearing sessions x \$750.00	=	\$6,000.00
Total Forum Fees	=	\$7,050.00

Claimants are liable for the sum of \$2,350.00, representing one-third of the total forum fees assessed. Claimants previously deposited \$750.00 with NASD Regulation, Inc. and, therefore, are liable for and shall remit the balance of \$1,600.00 to NASD Regulation, Inc.

Respondent Robert Thomas is liable and shall pay NASD Regulation, Inc. the sum of \$2,350.00, representing one-third of the total forum fees assessed.

Respondent Yakhin is liable and shall pay NASD Regulation, Inc. the sum of \$2,350.00, representing one-third of the total forum fees assessed.

ARBITRATION PANEL

Bernard S. Carrey, Esq.	-	Public Chairperson
Richard N. Goldstein, Esq.	-	Public Arbitrator
Stephanie Morse-Shamosh, Esq.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

Richard N. Goldstein
Richard N. Goldstein, Esq.

Date of decision: 6/2/99 RG

I, **Richard N. Goldstein, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Richard N. Goldstein
Richard N. Goldstein, Esq.

ARBITRATION PANEL


Bernard S. Carrey, Esq.	-	Public Chairperson
Richard N. Goldstein, Esq.	-	Public Arbitrator
Stephanie Morse-Shamosh, Esq.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Bernard S. Carrey, Esq.

Date of decision:

6/2/99 

I, Bernard S. Carrey, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.




Bernard S. Carrey, Esq.

ARBITRATION PANEL

Bernard S. Carrey, Esq.	-	Public Chairperson
Richard N. Goldstein, Esq.	-	Public Arbitrator
Stephanie Morse-Shamosh, Esq.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

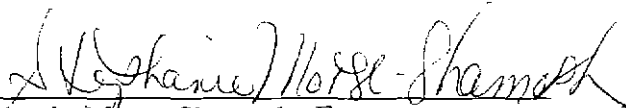


Stephanie Morse-Shamosh, Esq.

Date of decision:

6/2/99, Jla

I, **Stephanie Morse-Shamosh, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Stephanie Morse-Shamosh, Esq.