

AWARD

NASD Regulation, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

James V. Kohlhaas

98-00117

Name of Respondents

Investors Associates Incorporated  
Leonard Sharfman

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REPRESENTATION

James Kohlhaas ("Claimant") appeared pro se.

Investor Associates, Inc. ("Investor Associates") did not appear.

Leonard Sharfman ("Sharfman") appeared pro se.

CASE INFORMATION

Claimant filed the Statement of Claim on January 7, 1998.  
Claimant's Uniform Submission Agreement was executed by Claimant.

Investor Associates did not file a Statement of Answer.  
Investor Associates did not execute a Uniform Submission Agreement.

Sharfman filed a Statement of Answer on May 8, 1998.  
Sharfman did not sign a Uniform Submission Agreement.

Investor Associates and Sharman are collectively referred to as "Respondents."

HEARING INFORMATION

Hearing Date/Sessions:                      January 19, 1999                      One Session

CASE SUMMARY

Claimant alleged that Respondents behavior caused Claimant to suffer financial losses. Specifically, Claimant alleged that Respondents made unsuitable stock recommendations, failed to make material disclosures of adverse information concerning Claimant's investments, fraudulently induced Claimant to invest by promising huge profits, used high pressure sales tactics, and charged excessive mark-ups. As a result, Claimant alleged that he loss his investment as well as the opportunity to receive a fair return on his original investment.

Sharfman denied the allegations of wrongdoing set forth in the Statement of Claim. Sharfman maintained that all transactions were carried out in conformity with all applicable rules, regulations, industry standards, and practices. Sharfman also maintained that Claimant authorized and directed the execution of all the transactions in Claimant's account. Sharfman asserted that the claim is barred in that more than six years has passed since the alleged acts.

Investor Associates did not submit an Answer.

### RELIEF REQUESTED

Claimant requested:

1. Damages in the amount of \$6,348.75;
2. Attorneys' fees;
3. Arbitration costs; and
4. Any other relief deemed appropriate by the arbitration panel.

Sharfman requested:

1. That the Statement of Claim be dismissed in its entirety;
2. Attorneys' fees; and
3. Arbitration costs.

### OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by Claimant, the undersigned arbitrators have determined that Investor Associates was properly served with the Statement of Claim pursuant to rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent has received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents did not file with the NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the Code. The panel further determined that Respondents are bound by the rulings and determination of the arbitration panel on all issues submitted.

### FINDINGS & CONCLUSIONS

This Arbitration matter was presented in a single session hearing held in Baltimore, Maryland on January 19, 1999. Claimant, James V. Kohlhaas, and Respondent, Leonard Sharfman, both appeared at the hearing. Neither party was represented by counsel. Investors Associates, Inc. did not appear and has filed no Statement of Answer in this matter. It is reported that Investors Associates, Inc. is no longer in business.

Claimant filed a Statement of Claim dated January 7, 1998. Claimant has presented

several causes of action: the broker's recommendation of an unsuitable investment, failing to disclose adverse information concerning the investment, fraudulently inducing the investment and charging an excessive mark-up on the sale of stock. Claimant asks for damages in the amount of \$7,123.75. Respondent Leonard Sharfman filed a Statement of Answer with Affirmative Defenses dated May 8, 1998 that denies each of the allegations.

The first three causes of action are all closely related to the principle of suitability. Under the implied representation of fair dealing, it is the broker's duty to recommend to his customers only "suitable" investments. These are investments that are consistent with the investment needs and financial status of the customer. The broker's obligation in determining suitability is to "know your customer," so that investment recommendations can be tailored to the particular needs of the customer.

In order to recover, Claimant must show that the broker has intentionally or recklessly breached this duty. Testimony at the hearing established that a representative of Investors Associates, Inc. other than Respondent Leonard Sharfman contacted Claimant by telephone to establish an account. Claimant completed a form customer agreement, which was admitted into evidence. There is some indication that the form may have included an additional page or pages that would have provided financial disclosures from Claimant. Respondent testified that the form used by the firm would include more than the page offered by Claimant. Claimant stated that he only had a copy of the page offered.

Soon after Claimant made his original investment with Investors Associates, Inc., Claimant and Respondent discussed an investment in United Fashions, Inc. Upon the recommendation of Respondent, Claimant made an investment in United Fashions, Inc. Claimant testified that he received periodic reports from the company after he made the investment. Documents received in evidence indicated that United Fashions, Inc. did have an active business in 1992, although the value of the stock did decline steadily since the time of Claimant's investment.

From the evidence presented with respect to the suitability issue, the Arbitrator finds that the Claimant has not met the burden of proof necessary to establish a breach of duty by Respondent Leonard Sharfman. No evidence submitted established that this investment, although perhaps a poor choice with the advantage of hindsight, was not consistent with the stated investment objectives of Claimant to invest in growth stocks. A decline in the stock price is not sufficient to show that the investment was not suitable for Claimant.

With respect to the claim of excessive mark-up by the broker, Claimant asserts that unspecified research by a third party indicates that the high bid price for the United Fashions, Inc. stock for the period of his purchase was \$4.13, while Claimant was charged \$5.50 net by the broker. Respondent admits that this would be an excessive mark-up, but disputes this stated high bid price of \$4.13. No evidence has been submitted by Claimant to substantiate this figure. The Arbitrator must find, therefore, that Claimant has not met his burden of proof with respect to the claim of excessive mark-up.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claim is denied in its entirety.
2. That Sharfman's counterclaim is denied in its entirety.
3. That the parties shall bear their respective costs, including attorneys' fees, except as Other Costs and Forum Fees are specifically addressed below.
4. Any and all other relief request not specifically addressed are denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code, Investor Associates was assessed a member surcharge fee of \$300 that was waived by NASD Regulation.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the arbitrator has determined that NASD Regulation will retain the \$75.00 filing fee deposited by Claimant.

The arbitrator has assessed the following forum fee:

1 Hearing Session	X	\$200	=	\$200
Minus Claimant's hearing session deposit			=	\$200
Outstanding Balance			=	\$0

Forum fees are assessed equally against Claimant, Sharfman and Investor Associates.

Therefore Claimant Kohlhaas is assessed forum fees of \$66.66. Claimant previously submitted a \$200.00 hearing session deposit with NASD Regulation, therefore, Claimant does not have an outstanding balance.

Sharfman is assessed \$66.66 representing one-third of the forum fees. Claimant previously submitted a \$200.00 hearing session deposit with NASD Regulation. Accordingly, Sharfman shall reimburse Claimant \$66.66.

Investor Associates is assessed \$66.66 representing one-third of the forum fees. Claimant previously submitted a \$200.00 hearing session deposit with NASD Regulation. Accordingly, Investor Associates shall reimburse Claimant \$66.66.

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

Arbitrator's Signature

A handwritten signature in cursive script, appearing to read "J. Gregory Yavuzian", written over a horizontal line.

J. Gregory Yavuzian

Public Chairperson

Date Award Served:

February 12, 1999