

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimants

Richard Cole, General Partner, Cole Family Partners, LP
Jai Gaur
Joan M. Gil
Jim Noonan
Robert Patton
Mark Schlefer
Ronald Suster

vs.

Case No.
98-00360

Name of Respondents

Duke & Co., Inc.
Lawrence Rosenberg
Victor Wang
Salvatore Saporito

Name of Respondent

Duke & Co., Inc.
Lawrence Rosenberg
Victor Wang
Salvatore Saporito

REPRESENTATION

For Claimants Richard Cole, General Partner, Cole Family Partners, LP ("Cole"), Jai Gaur ("Gaur"), Joan M. Gil ("Gil"), Jim Noonan ("Noonan"), Robert Patton ("Patton"), Mark Schlefer ("Schlefer"), Ronald Suster ("Suster") (collectively "Claimants") appeared Lawrence M. Phillips, Esq., a sole practitioner located in New York, New York.

All claims were stayed against Respondent Duke & Co., Inc. ("Duke") pursuant to a bankruptcy filing. Therefore, no representative appeared at the hearing on Duke's behalf.

Respondent Lawrence Rosenberg ("Rosenberg") did not enter an appearance in this matter.

Respondent Victor Wang ("Wang") did not enter an appearance in this matter.

Respondent Salvatore Saporito ("Saporito") did not enter an appearance in this matter.

CASE INFORMATION

Claimants' Statement of Claim was filed on January 28, 1998.
Claimant Cole's Submission Agreement was signed on March 9, 1998.
Claimant Gaur's Submission Agreement was signed on November 30, 1997.
Claimant Gil's Submission Agreement was signed on October 30, 1998.
Claimant Noonan's Submission Agreement was signed on November 21, 1997.
Claimant Patton's Submission Agreement was signed on November 21, 1997.
Claimant Schlefer's Submission Agreement was signed on December 5, 1997.
Claimant Suster's Submission Agreement was signed on January 26, 1998.
Claimants' Amended Statement of Claim was filed on February 10, 1998.

Respondent Duke did not file a Statement of Answer or Submission Agreement.

Respondent Rosenberg did not file a Statement of Answer or Submission Agreement.

Respondent Wang did not file a Statement of Answer or Submission Agreement.

Respondent Saporito did not file a Statement of Answer or Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:	January 22, 1999	-	1 session (Full panel)
Hearing Date/Sessions:	May 19, 1999	-	2 sessions

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

CASE SUMMARY

Claimants alleged that they were all, with the exception of Gil, customers of Duke and were solicited to invest in various limited partnerships offered by Duke from May, 1992 through early 1993, for a total investment of \$900,000.00. Claimants further alleged that Gil directly invested in Duke in July, 1992 based on its personal guarantee of repayment. Claimants asserted that they were all customers of Duke when they were solicited by its principals to invest in the B/D, either directly or through limited partnership interests issued by Duke for that purpose. Claimants also asserted that the investment vehicles were known as the Cornerstone Limited Partnerships II, III, and IV ("Cornerstone"). Claimants contended that the solicitation provided that the investment be paid to Duke and managed by Duke's partners. Claimants maintained that, when Duke solicited their investment, Duke and its principals failed to disclose to them that Duke intended to use their funds to operate a chop-stock house, an illegal RICO style enterprise and, thereby, defrauded them of their entire \$1,025,000.00 investment. Claimants asserted that this was a material omission and operated as fraud on them under the '34 Act, the New York State anti-fraud statutes, and at common law. Claimants further asserted that, as a result, there

never was any opportunity for them to realize profits on their investment, which was represented and which they had a right to expect from a legitimate B/D operation.

RELIEF REQUESTED

Claimants requested an award jointly and severally against the Respondents as follows:

1. A full accounting of Duke's profits to date, with Cole, Gaur, Noonan, Schlefer, and Suster, who each invested in Cornerstone, seeking a return of 200% of their original investment from Duke's profits under the terms of the investment agreement, plus 49% of all such profits. Specifically, Claimant Suster requested damages of \$250,000.00 times 200%, Claimant Noonan requested damages of \$200,000.00 times 200%, Claimants Schlefer, Patton, and Cole each requested damages of \$100,000.00 times 200%, plus such amount to be determined upon an accounting as described above, and the proof of other specific damages presented before the arbitration panel. Claimant Gaur requested damages of \$125,000.00, plus 1.25% of such amount to be determined upon an accounting as described above, and the proof of other specific damages presented before the arbitration panel. Claimant Gil, who invested \$125,000.00, requested 1.25% of Duke's profits to date, plus her principal back;
2. In the alternative, Claimants requested rescission of each of their original investment, plus maximum legal interest from the date of their investment at Duke;
3. For breach of contract, damages based upon the benefit of the bargain theory, i.e. 200% of their investment in Cornerstone II and/or III, plus 50 1/4% of Duke's profits or net worth as found on an accounting;
4. For RICO, a trebling of all damages found, and reasonable legal fees;
5. In the alternative to RICO damages, punitive damages; and
6. All Claimants' costs, expenses, disbursements, and legal fees, and for such other relief as the arbitration panel may deem just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Claimants, the only parties to attend the hearing, 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, Claimants have agreed to receive conformed copies of the Award while the original remains on file with NASD Regulation, Inc.

Wang Holdings, Inc. ("Wang Holdings") was named as a Respondent in the Statement of Claim filed by the Claimants. Wang Holdings was not a member of the NASD at the time this

controversy arose, and did not sign a Submission Agreement voluntarily submitting to arbitration. Accordingly, NASD Regulation, Inc. declined jurisdiction over Wang Holdings.

The panel made the following determinations concerning Duke, Rosenberg, Wang, and Saporito, who did not file a Statement of Answer or a Submission Agreement and did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Duke was a member of the NASD at the time this controversy arose. The panel found that Rosenberg, Wang, and Saporito, were persons associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found jurisdiction over Duke, Rosenberg, Wang, and Saporito pursuant to Rule 10301 of the Code.
3. The panel found that Duke, Rosenberg, Wang, and Saporito, were required to file a Statement of Answer and Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Duke, Rosenberg, Wang, and Saporito pursuant to Rule 10314 (a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Duke, Rosenberg, Wang, and Saporito with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Duke, Rosenberg, Wang, and Saporito, whose absences were unexcused.

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 Duke is in bankruptcy. As a result, automatic statutory stay of proceedings against Duke are subject to Claimants obtaining lift of stay from the bankruptcy court. There is no such action in the record, so no award can be rendered against Respondent Duke;
2. Respondent Rosenberg is liable and shall pay to Claimant Gil the sum of \$125,000.00 plus interest at the rate of 9% per annum from July 8, 1992 on the basis of the personal guaranty of the investment;
3. All claims against Respondents Wang and Saporito are dismissed as there is no evidence on the record that they acted in connection with Claimants in any manner

other than as employees and officers of Duke;

4. Claimants' request for rescission of their investment contract is denied because no supporting evidence was found in the record;
5. Claimants' claim for breach of contract is denied;
6. Respondent Rosenberg is liable and shall pay Claimants attorney's fees of \$10,000.00; and
8. All other claims are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") Duke has paid NASD Regulation, Inc. the \$2,000.00 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 \$250.00 non-refundable filing fee paid by Claimant and have assessed the following Forum Fees:

1 pre-hearing conference x \$1,000.00	\$1,000.00
2 hearing sessions x \$1,000.00	\$2,000.00
Total Forum Fees	\$3,000.00

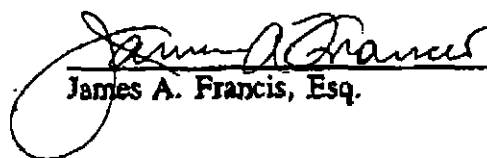
Respondent Rosenberg is liable and shall pay NASD Regulation, Inc. the sum of \$3,000.00 representing the total amount of forum fees assessed.

NASD Regulation, Inc. shall refund the \$1,000.00 hearing session deposit paid by Claimants.

ARBITRATION PANEL

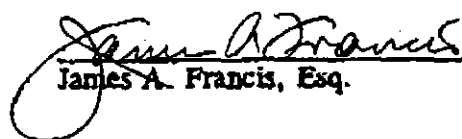
J. Kirkland Grant	-	Public Chairperson
Stephen J. Bury, Esq.	-	Public Arbitrator
James A. Francis, Esq.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


James A. Francis, Esq.

Date of decision: June 11, 1999

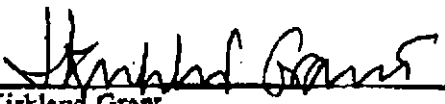
I, James A. Francis, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


James A. Francis, Esq.

ARBITRATION PANEL

J. Kirkland Grant	-	Public Chairperson
Stephen J. Bury, Esq.	-	Public Arbitrator
James A. Francis, Esq.	-	Industry Arbitrator

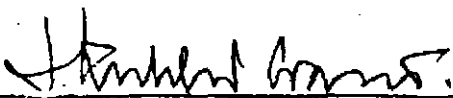
CONCURRING ARBITRATOR'S SIGNATURE


J. Kirkland Grant

June 11, 1999

Date of decision: _____


I, J. Kirkland Grant, 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.


J. Kirkland Grant

ARBITRATION PANEL

J. Kirkland Grant	-	Public Chairperson
Stephen J. Bury, Esq.	-	Public Arbitrator
James A. Francis, Esq.	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

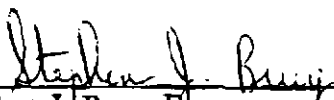


Stephen J. Bury, Esq.

Date of decision: June 11, 1999

Date of decision:

I, Stephen J. Bury, 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.



Stephen J. Bury, Esq.