

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

The Estate of Marvin J. Nissman

vs.

Case No.
98-00422

Names of Respondents

First Montauk Securities Corp.
Annette Soldo

REPRESENTATION

For Claimant Estate of Marvin J. Nissman ("Claimant") appeared Edward Werner, Esq., attorney at law, located in Jackson, New Jersey.

For Respondents First Montauk Securities Corp. ("First Montauk") and Annette Soldo ("Soldo") (collectively "Respondents") appeared Lloyd Clareman, Esq., in-house counsel for First Montauk, located New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on January 30, 1998.

Claimant's Submission Agreement was signed on January 29, 1998.

Respondent's Statement of Answer was filed on June 12, 1998.

Respondent First Montauk's Submission Agreement was signed on June 17, 1998.

Respondent Soldo's Submission Agreement was signed on June 17, 1998.

HEARING INFORMATION

Pre-Hearing Conferences:	November 9, 1998	-	1 session
Hearing Dates/Sessions:	January 14, 1999	-	2 sessions
	February 10, 1999	-	1 session

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

Claimant alleged that Marvin Nissman ("Nissman") began investing with Respondents in November of 1991. Claimant asserted that Soldo, the account executive at First Montauk, initially recommended stocks that were suitable for Nissman, a gravely ill, retired man living on a small, fixed income. Claimant maintained that, beginning in January of 1992, Soldo began trading in over-the-counter stocks that involved high risk and volatility. Claimant further maintained that Soldo persuaded Nissman to buy unsuitable junk equities on margin, despite Soldo's knowledge that Nissman was mentally confused and did not fully understand the risks to which he was being exposed. Claimant alleged that many of the stocks were underwritten by First Montauk. Claimant also alleged that most, if not all, of the stocks in Nissman's account were "washed through" First Montauk's inventory by buying or selling the stocks at comparatively large mark ups and mark downs, such that Nissman's account was churned. Claimant further alleged that Nissman's total investment of \$65,906.00 was used to purchase \$279,842.00 of various equities in four years. Claimant contended that First Montauk permitted Soldo to convert Nissman's money to her personal use, exposed Nissman to great risk, and prevented Nissman's savings from growing, all so that Soldo and First Montauk could make a profit. Claimant contended that, in 1995, at executrix Susan Nissman's insistence, Nissman instructed Soldo to liquidate his stock holdings in order to mitigate some of the damages. Claimant asserted that, although Nissman's account closed with a \$7,428.00 balance, this "profit" occurred simply because the account had been liquidated when one stock, Iomega, was temporarily "up."

Respondents maintained that Nissman never voiced any complaint about his account. Respondents further maintained that the complaint was not brought until over a year after Nissman's death, such that Nissman was no longer able to testify about his actual dealings and interactions with Respondents. Respondents contended that Nissman traded with Soldo at her prior firms and, contrary to Claimant's suggestions, was not "lured" into doing business with Respondents based upon investment recommendations which were initially suitable. According to Respondents, Nissman advised Soldo that he wanted to actively trade a modest amount of money, while holding onto other investments that were more conservative. Respondents alleged that, on many occasions, Nissman was the one to initiate discussions about a particular stock. Respondents further alleged that every transaction was discussed and approved by Nissman in advance. Respondents contended that, because Nissman approved all transactions, because the annualized turnover ratio was maintained at a very low level, and because Soldo made recommendations in good faith, Claimant's allegations of churning are baseless. Respondent asserted that there is hardly cause for complaint since the total return on Nissman's account was \$21,563.00, approximately 75% in a little over five years, or just under 15% annually.

RELIEF REQUESTED

Claimant requested judgment against Respondents for the disgorgement of all profits made by First Montauk, including \$7,546.00 in commissions, and including the sums charged Nissman for the purchases and sales of securities, less the amounts paid by Respondents for the purchase and sales of the same securities. Claimants further requested actual damages of \$24,309.00, plus unspecified damages for lost business opportunities, all costs associated with this arbitration, and for such other relief as the arbitration panel deems just and proper.

Respondent requested that the claims in this matter be dismissed in their entirety, that all hearing costs be assessed against the Claimant, and that the Panel direct that this complaint be expunged from Soldo's permanent Central Registration Depository ("CRD") record.

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. Respondents First Montauk and Soldo be and hereby are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$2,380.00.
2. Respondents First Montauk and Soldo be and hereby are jointly and severally liable for all forum fees associated with this arbitration, as set forth more fully in the "Forum Fees" section, below.
3. All other requests for relief are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") First Montauk has paid NASD Regulation, Inc. the \$400.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that the NASD will retain the \$100.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

1 Pre-Hearing Conference x \$300.00	=	\$ 300.00
4 Hearing Sessions x \$300.00	=	<u>\$1,200.00</u>
Total Forum Fees	=	\$1,500.00

Respondents First Montauk and Soldo be and hereby are liable for and shall pay to NASD Regulation, Inc. the sum of \$1,500.00, representing the total amount of forum fees assessed.

ARBITRATION PANEL

Robert D. Herschman, Esq.

Public Chairperson


ARBITRATOR'S SIGNATURE



Robert D. Herschman, Esq.

Date of decision: April 13, 1999

I, Robert D. Herschman, 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.



Robert D. Herschman, Esq.