

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Elliot Katz, (Claimant) vs. Adam Gitstein, (Respondent)

Case Number: 99-00252

Hearing Site: New York, NY

REPRESENTATION OF PARTIES

Claimant, Elliot Katz, hereinafter referred to as "Claimant": Theodore A. Krebsbach, Esq., Theodore A. Krebsbach & Associates, P.C., New York, NY.

Respondent Adam Gitstein ("Gitstein"), hereinafter referred to as "Respondent": Aegis Frumento, Esq., Singer Frumento, LLP, New York, NY. Subsequently, Singer Frumento withdrew as counsel to Respondent and Respondent did not enter any further appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: January 14, 1999.

Claimant signed the Uniform Submission Agreement: January 12, 1999.

Statement of Answer filed by Respondent on or about: April 26, 1999.

Respondent did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: misrepresentation; suitability; unauthorized trading; churning; and, failure to supervise.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state a claim upon which relief may be granted; Claimant's actions were the causes of his loss; Claimant acted in reckless disregard of facts of which he was or should have been aware, and failed to exercise the required due diligence and care; the doctrine of ratification; Respondent did not control Claimant's account, he merely made investment recommendations to Claimant; the doctrine of waiver: Respondent acted in good faith; Claimant's losses are attributable to market conditions; Claimant assumed the risks of investing in the securities markets; the doctrines of estoppel and unclean hands; Claimant and Respondent entered into a settlement agreement prior to this hearing and this agreement limits the recovery Claimant can receive in this matter; and, the Panel does not have the power or authority to award punitive

damages in this matter.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$100,000.00
Punitive Damages	\$250,000.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondent requested an award dismissing the Statement of Claim in its entirety, plus attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant reached a settlement with Respondent First Madison Securities, Inc ("First Madison") prior to the hearing in this matter. The settlement agreement is incorporated herein.

Respondent did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

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.

AWARD

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

1. Respondent be and hereby is liable for and shall pay to Claimant the sum of **\$36,412.08**, plus interest at the rate of **9%** per annum accruing from **October 15, 1998** until the date of the award.
2. Respondent be and hereby is liable and shall reimburse Claimant for the costs attributable to this arbitration.
3. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 200.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event giving rise to the dispute. In this matter, First Madison Securities, Inc. is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$750.00 = \$ 750.00

Pre-hearing conference: October 26, 1999 1 session

Two (2) Hearing sessions x \$750.00 = \$1,500.00

Hearing Date: March 7, 2000 2 sessions

Total Forum Fees = \$2,250.00

The Panel has assessed \$2,250.00 of the forum fees against Respondent.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 200.00
<u>Total Fees</u>	= \$ 200.00
<u>Less payments</u>	= \$ 950.00
Refund Due Claimant	= \$ 750.00

2. Gitstein be and hereby is solely liable for:

<u>Forum Fees</u>	= \$2,250.00
<u>Total Fees</u>	= \$2,250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$2,250.00

3. First Madison be and hereby is liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

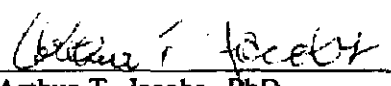
All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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.

Elizabeth Lubetkin
Public Arbitrator, Presiding Chair

Signature Date



Arthur T. Jacobs, PhD
Public Arbitrator



Signature Date

Michael W. Brody, Esq.
Industry Arbitrator


Signature Date

April 24, 2000

Date of Service (For NASD office use only)

Concurrence Arbitrators' Signatures

I, the undersigned arbitrator, 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.



Elizabeth Lubetkin
Public Arbitrator, Presiding Chair



Signature Date

Arthur T. Jacobs, PhD
Public Arbitrator

Signature Date

Michael W. Brody, Esq.
Industry Arbitrator

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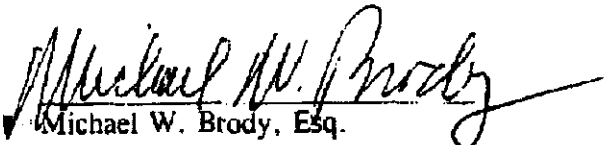
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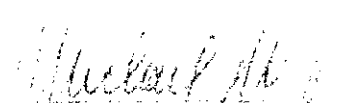
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Signature Date

Arthur T. Jacobs, PhD
Public Arbitrator

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Michael W. Brody, Esq.
Industry Arbitrator


4/10/00
Signature Date Michael W. Brody, Esq.
Industry Arbitrator

April 24, 2000
Date of Service (For NASD office use only)