

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Charles P. and Jane E. Adkins  
Adkins & Co., Inc.

NASD Case No. 99-00850  
Hearing Location: Washington, D.C.

Name of Respondents

Philip E. Teseo  
Victor M. Wang

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**REPRESENTATION OF PARTIES**

Claimants Charles P. Adkins, Jane E. Adkins, and Adkins & Company, Inc. ("Claimants"): John P. Connolly, Esq., Alexandria, Virginia.

Respondent Philip E. Teseo ("Respondent Teseo") did not appear.

Respondent Victor M. Wang ("Respondent Wang") did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: February 22, 1999.

Claimants Charles P. Adkins and Adkins & Company, Inc. signed the Uniform Submission Agreement: February 19, 1999.

Claimant Jane E. Adkins signed the Uniform Submission Agreement: February 22, 1999.

Statement of Answer filed by Respondent Teseo on or about: May 11, 1999.

Respondent Teseo signed the Uniform Submission Agreement: May 11, 1999.

Respondent Wang did not file a Statement of Answer.

Respondent Wang did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of Sections 10(b) and Section 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; control person liability under Section 20(a) of the Securities Exchange Act of 1934 and failure to supervise; violation of Section 13.1-502 of the Code of Virginia; violation of the NASD Rule of Fair Practice; breach of contract; constructive fraud; and fraud and deceit.

Unless specifically admitted in its Answer, Respondent Teseo denied the allegations made in the Statement of Claim and asserted the following defenses: the claim fails to state a claim upon which relief may be granted; Claimants were fully advised of, and understood, the high risk nature of their

investments and knowingly assumed and accepted the risks entailed in making those investments; any loss incurred by Claimants was caused, in whole or in part, by conditions and events outside the control of Respondent Teseo, and Claimants therefore are not entitled to any recovery; Claimants failed to act promptly and with due diligence to mitigate their damages after they knew or should have known of the alleged acts and omissions of which they complain, and Claimants are barred from recovering damages which were sustained after such time; Respondent Teseo's relationship with Claimants was that of an ordinary registered representative to Claimants and Respondent Teseo did not owe a fiduciary duty to Claimants; Claimants are estopped or otherwise precluded from recovery under the doctrines of waiver, estoppel and ratification; by failing to comply with the terms of their customer agreements, Claimants, either expressly or impliedly or both, knowingly approved, authorized, participated in, and ratified all transactions in their accounts, and Claimants are estopped from recovery under the doctrines of waiver, estoppel and ratification; each and every transaction in Claimants' accounts was suitable in light of Claimants' reported financial status and stated investment objectives; Claimants may not recover exemplary damages in this proceeding, as same are neither supported by the facts nor permitted by applicable law; and Claimants may not recover attorneys' fees in this proceeding, as same are neither supported by the facts nor permitted by applicable law.

#### **RELIEF REQUESTED**

**Claimants requested:**

Compensatory Damages	\$ 315,000.00
Opportunity Loss Damages	\$ 250,000.00
Punitive Damages	\$ 250,000.00
Interest	That interest be assessed from the date of the activities complained of up to the time of payment of the award.
Attorneys' Fees	As determined by the Panel.
Other Costs	As determined by the Panel.
Other Monetary/Non-Monetary Relief if any:	As determined by the Panel.

Respondent Teseo requested dismissal of the Statement of Claim.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Teseo filed with NASD Regulation, Inc. Office of Dispute Resolution ("NASD") a Statement of Answer and a properly executed submission to arbitration. Respondent Wang did not file with the NASD a properly executed submission to arbitration, but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code"). Upon review of the file and the representations made on behalf of Claimants, the undersigned Panel of Arbitrators ("Panel") determined that Respondent Wang has been properly served with the Statement of Claim. Neither Respondent Teseo nor Respondent Wang was present at the hearing in this matter. However, the Panel determined that both Respondents Teseo and Wang received due notice of the hearing and decided that the arbitration of this matter would proceed without said Respondents present in accordance with the Code.

The parties present at the hearing 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 decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Teseo and Wang are jointly and severally liable and shall pay to Claimants \$232,000.00 plus 6% simple interest from August 1, 1997 until this Award is paid in full;
2. That Respondents Teseo and Wang are jointly and severally liable and shall pay to Claimants lost investment opportunity costs of \$225,000.00;
3. That Respondents Teseo and Wang are jointly and severally liable and shall pay to Claimants punitive damages of \$100,000.00. The Panel bases its authority for its award of punitive damages on Virginia common law;
4. That Respondents Teseo and Wang are jointly and severally liable and shall pay to Claimants costs and attorneys' fees of \$15,000.00. The Panel bases its authority for its award of costs and attorneys' fees on Section 13.1-502 of the Code of Virginia; and
5. That the parties shall bear the cost of the forum fees incurred in this arbitration as specified below; and
6. That any and all relief not specifically addressed herein is 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	= \$ 250.00
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#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Respondents' former firm, Duke & Co., Inc.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 3,500.00
Hearing process fee	= \$ 3,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

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**Forum Fees and Assessments**

The Panel assessed 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:

1	Pre-hearing session with Panel x \$1,000.00			= \$ 1,000.00
	Pre-hearing conference:	November 16, 1999	1 session	
1	Hearing session x \$1,000.00			= \$ 1,000.00
	Hearing Date:	January 19, 2000	1 session	
TOTAL FORUM FEES				= \$ 2,000.00

1. The Panel assessed \$1,000.00 of the forum fees to Claimants.
2. The Panel assessed \$1,000.00 of the forum fees to Respondents Teseo and Wang, jointly and severally.

**Fee Summary**

Claimants are liable for:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	= \$ 1,000.00
Total Fees	= \$ 1,250.00
<u>Less payments</u>	= \$ 1,250.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondents Teseo and Wang are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 1,000.00
Total Fees	= \$ 1,000.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 1,000.00

Duke & Co., Inc. is liable for

<u>Member Fees</u>	= \$ 9,000.00
Total Fees	= \$ 9,000.00
<u>Less payments</u>	= \$ 9,000.00
Balance Due NASD Regulation, Inc.	= \$ 9,000.00

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

DATE AWARD SIGNED:

Concurring Arbitrators' Signatures

1/28/00

Glenn R. Lawrence  
Glenn R. Lawrence, Esq. - Chairperson  
Public Arbitrator

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Eugene I. Goldman, Esq. - Panelist  
Public Arbitrator

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Anne D. Coyle - Panelist  
Industry Arbitrator

Date Award served by NASD Regulation: February 9, 2000

DATE AWARD SIGNED:


Concurring Arbitrators' Signatures

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Glenn R. Lawrence, Esq. - Chairperson  
Public Arbitrator

1/28/2000

  
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Eugene I. Goldman, Esq. - Panelist  
Public Arbitrator

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Anne D. Coyle - Panelist  
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Glenn R. Lawrence, Esq. - Chairperson  
Public Arbitrator

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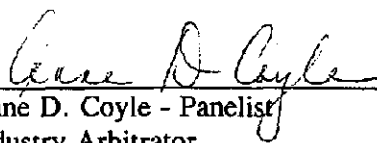
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Eugene I. Goldman, Esq. - Panelist  
Public Arbitrator

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1/28/00

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Anne D. Coyle - Panelist  
Industry Arbitrator

Date Award served by NASD Regulation: February 9, 2000