

7-552

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

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In the Matter of the Arbitration Between:

- I. Spear Leeds & Kellogg vs. Bullseye Securities, Inc.
- II. Bullseye Securities, Inc., vs. Spear Leeds & Kellogg, Pasquale Schettino, Gary Goldring, Robert Lewis and Lawrence Securities, Ltd.
- III. Pasquale Schettino vs. Joseph and Eva Roffler

NASD Case Number: 99-02963

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

For Bullseye Securities, Inc., ("Bullseye"), and Joseph and Eva Roffler ("Roffler") appeared *pro se*.

For Spear, Leeds & Kellogg ("SLK") and Garry Goldring ("Goldring"): Michael J. McAllister, Esq., Satterlee, Stephens, Burke & Burke, LLP, New York, New York.

For Pasquale Schettino ("Schettino"): Eric R. Levine, Esq., Solovay Edlin & Eiseman, LLC, New York, New York.

Respondent Lawrence Securities, Ltd. ("LSL") appeared *pro se*.

Respondent Robert Lewis ("Lewis"): appeared *pro se*.

**CASE INFORMATION**

Statement of Claim filed by Bullseye on or about: August 18, 1995.

Amended Statement of Claim filed on or about: August 13, 1996.

Answer to SLK's Statement of Claim filed on or about: November 10, 1995.

Answer to SLK's Amended Statement of Claim filed on or about: August 13, 1996.

Answer to SLK's Counterclaim filed on or about: November 18, 1996.

Bullseye signed the Uniform Submission Agreement: August 18, 1995.

Answer to Schettino's Counterclaim filed by Joseph and Eva Roffler on or about: November 8, 1996.

Joseph and Eva Roffler signed the Uniform Submission Agreement: August 18, 1995.

Statement of Claim filed by SLK on or about: August 16, 1995.  
Amended Statement of Claim filed by SLK on or about: June 12, 1996.  
Answer to Bullseye's Statement of Claim and Counterclaim filed on or about: October 17, 1996.  
SLK signed the Uniform Submission Agreement: August 16, 1995.

Statement of Answer and Counterclaim filed by Schettino on or about: November 10, 1995.  
Answer to Bullseye's Amended Statement of Claim filed on or about: October 11, 1996.  
Schettino signed the Uniform Submission Agreement: December 22, 1995.

Goldring filed a Uniform Submission Agreement on: November 27, 1995.

Joint Statement of Answer filed by Lewis and LSL on October 1, 1996.  
Lewis did not file a properly executed Uniform Submission Agreement.  
LSL did not file a properly executed Uniform Submission Agreement.

### CASE SUMMARY

Bullseye asserted the following causes of action: wrongful trading and liquidation of account; breach of guarantee made by Schettino, failure to supervise; breach of fiduciary duty, contract, covenant of good faith, and fair dealing; negligence; conversion, and defamation.

Bullseye, in its response to SLK's Claim and Counterclaim, asserted the following defenses: SLK's Claim and Counterclaim failed to state a claim, is barred by gross negligence, and should be denied under the doctrine of estoppel and unclean hands.

Bullseye, in its response to Schettino's Counterclaim, asserted the following defenses: Schettino's Counterclaim failed to state a cause of action, is barred by the doctrine of unclean hands, and is void as a matter of law.

SLK and Goldring denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants are estopped and waived their right to assert any cause of action; ratification, and laches.

SLK, in its Counterclaim against Bullseye, and Joseph and Eva Roffler asserted the following causes of action: commingling of corporate and personal funds and, unsecured debit balance resulting from the liquidation of Bullseye's account at SLK..

Schettino denied in part the allegations made in Bullseye's Statement of Claim and asserted the following defenses: all trades executed were authorized and ratified; Claimants Statement of Claim is baseless and lacks any evidentiary support, and Bullseye refrained from taking any prior action.

Schettino, in his Counterclaim against Bullseye, asserted the following cause of action: frivolous prosecution.

Lewis and LSL denied the allegations made in Bullseye's Statement of Claim and maintained that they are not responsible for any of the losses incurred by Bullseye.

### **RELIEF REQUESTED**

Claimant Bullseye requested:

Compensatory Damages	\$3,080,000.00
Defamation	\$1,000,000.00

Spear, Leads in their Counterclaim requested:

Compensatory Damages	\$ 341,546.25
Attorneys' Fees	unspecified
Costs	unspecified

Respondent Schettino requested that Claimant's claims be dismissed.

Respondent Schettino in his Counterclaim requested:

Punitive Damages	\$1,000,000.00
Attorneys' Fees	unspecified
Costs	unspecified

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

This matter was originally filed with, and administered by, the American Stock Exchange ("AMEX") Arbitration Department. As of June 1, 1999 the Amex Arbitration Department was dissolved and the further administration of this matter was assumed by the NASD Regulation, Inc. Office of Dispute Resolution.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondents LSL and Lewis have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the AMEX Code of Arbitration Procedure (the "Code").

Respondents LSL and Lewis did not file with the AMEX Arbitration Department a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and LSL having answered the claim is bound by the determination of the Panel on all issues submitted. Lewis is bound by the determination of the Panel on all issues submitted.

By letter dated September 13 and 14, 1995, pursuant to AMEX Rule 606 (d) (3), Bullseye and

SLK agreed to consolidate the above-titled proceedings.

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. SLK be and is hereby liable and shall pay to Joseph and Eva Roffler the sum of \$1,250,000.00 in compensatory damages. \*
2. Lewis be and is hereby liable and shall pay Joseph and Eva Roffler the sum of \$80,000.00 in compensatory damages.
3. SLK and SLK86 be and hereby are jointly and severally liable and shall pay to Joseph Roffler \$38,460.00 and are further liable, jointly and severally, to him in a sum representing the present value of \$148,686.00 payable in equal annual amounts over a period of nine years.
4. All other claims and Respondents Motion to Dismiss are denied.

\* Arbitrator Crowe dissents from this determination.

### 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:

Bullseye initial claim filing fee	=	\$300.00
SLK initial claim filing fee	=	\$300.00

#### Forum Fees and Assessments

The Panel assessed forum fees for each hearing session conducted at the NASD Regulation, Inc., Office of Dispute Resolution. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with the proceedings conducted at the NASD Regulation, Inc., Office of Dispute Resolution are:

Fourteen (14) Hearing sessions x \$1,000.00	=	\$14,000.00
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Hearing Dates:	June 1, 1999	-	2 sessions
	June 2, 1999	-	2 sessions
	June 4, 1999	-	2 sessions
	June 7, 1999	-	2 sessions
	June 8, 1999	-	2 sessions
	June 9, 1999	-	2 sessions
	July 7, 1999	-	2 sessions

Total Forum Fees	=	\$14,000.00
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1. The Panel has assessed \$3,500.00 of the forum fees jointly and severally against Joseph and Eva Roffler.
2. The Panel has assessed \$3,500.00 of the forum fees against SLK.
3. The Panel has assessed \$3,500.00 of the forum fees against Lewis.
4. The Panel has assessed \$3,500.00 of the forum fees against Schettino.

**Fee Summary**

1. Joseph and Eva Roffler be and hereby are jointly and severally liable for:

Filing Fee	=	\$ 300.00
<u>Forum Fees</u>	=	<u>\$3,500.00</u>
Total Fees	=	\$3,800.00
<u>Less payments</u>	=	<u>\$ 300.00</u>
Balance Due NASD Regulation, Inc.	=	\$3,500.00

2. SLK be and hereby is solely liable for:

Filing Fee	=	\$ 300.00
<u>Forum Fees</u>	=	<u>\$3,500.00</u>
Total Fees	=	\$3,800.00
<u>Less payments</u>	=	<u>\$ 300.00</u>
Balance Due NASD Regulation, Inc.	=	\$3,500.00

3. Lewis be and hereby is solely liable for:

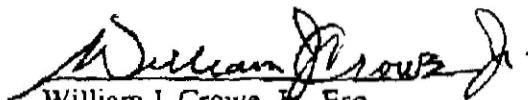
<u>Forum Fees</u>	=	<u>\$3,500.00</u>
Balance Due NASD Regulation, Inc.	=	\$3,500.00

4. Schettino be and hereby is solely liable for:

<u>Forum Fees</u>	=	<u>\$3,500.00</u>
Balance Due NASD Regulation, Inc.	=	\$3,500.00

I, the undersigned arbitrator, do hereby affirm, pursuant to article 7505 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrators' Signatures

  
William J. Crowe, Jr., Esq.  
Industry Arbitrator, Presiding Chair

October 7, 1999  
Signature Date

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Matthew J. Tolan  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

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Norman J. Schwartz  
Industry Arbitrator

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Signature Date

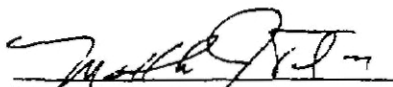
October 8, 1999  
Date of Service (For NASD office use only)

I, the undersigned arbitrator, do hereby affirm, pursuant to article 7505 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

**Arbitrators' Signatures**

\_\_\_\_\_  
William J. Crowe, Jr., Esq.  
Industry Arbitrator, Presiding Chair

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Signature Date

  
\_\_\_\_\_  
Matthew J. Tolán  
Industry Arbitrator

10/2/99  
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Signature Date

\_\_\_\_\_  
Norman J. Schwartz  
Industry Arbitrator

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Signature Date

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October 8, 1999

Date of Service (For NASD office use only)