

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Michaelis Development, LLP and
Mark J. Phillippe

and

99-03104
Indianapolis, Indiana

Name of Respondents

Redstone Securities, Inc.
Evgeny Rubin, Jr.
Thomas W. Laundrie
Richard J. Belz
Gary I. Purcell
Vincent R. Drohan

REPRESENTATION OF PARTIES

Michaelis Development, LLP and Mark J. Phillippe ("Claimant") was represented by Thomas A. Hargett, Esq., Maddox Koeller Hargett & Caruso, Indianapolis, Indiana.

Redstone Securities, Inc. ("Respondent Redstone"), Evgeny Rubin, Jr. ("Respondent Rubin"), Thomas W. Laundrie ("Respondent Laundrie"), Richard J. Belz ("Respondent Belz"), Gary I. Purcell ("Respondent Purcell") and Vincent R. Drohan ("Respondent Drohan") were represented by Charles M. O'Rourke, Esq., Woddbury, New York.

CASE INFORMATION

The Statement of Claim was filed on or about July 7, 1999. Submission Agreement of Claimant Michaelis Development, LLP was signed on July 1, 1999 by Richard A. Michaelis, Managing Partner. Submission Agreement of Claimant Mark J. Phillippe was signed on June 26, 1999.

Statement of Answer was filed by Respondents Redstone Securities, Inc., Thomas W. Laundrie, Richard J. Belz, Gary Purcell and Vincent R. Drohan on or about September 2, 1999. Submission Agreement of Respondent Redstone Securities, Inc. was signed on July 22, 1999 by Thomas Laundrie. Submission Agreement of Respondent Thomas W. Laundrie was signed on July 22, 1999. Submission Agreement of Respondent Gary Purcell was signed on July 22, 1999. Submission

Agreement of Respondent Vincent R. Drohan was signed on July 22, 1999. Submission Agreement of Respondent Richard J. Belz was signed on July 22, 1999.

Statement of Answer was filed by Respondent Evgeny Rubin, Jr. on or about September 17, 1999. Submission Agreement of Respondent Evgeny Rubin, Jr. was signed on September 14, 1999.

CASE SUMMARY

Claimant submitted the following summary:

Claimant Michaelis Development LLP alleged that the Respondents violated the Indiana Securities Act Section 23-2-1-12, which prohibits any person in connection with the offer, sale or purchase of any security, either directly or indirectly, (1) to employ any device, scheme or artifice to defraud, or (2) make any untrue statements of material fact or to admit to state a material fact necessary in order to make the statements made in light of the circumstances under which they are made, not misleading, or (3) to engage in any act, practice or course of business which operated or would operate as a fraud or deceit upon any person.

From June 25, 1998 to November 20, 1998 the Michaelis Development LLP's consolidated accounts sustained losses of \$49,167.00. Relative to the equity in the account, the Michaelis Development LLP's investment portfolio was turned over 17.74 times and had an annual cost maintenance of 33.12%.

In addition to violations of the Indiana Securities Act, Michaelis Development LLP alleged violations of: Section 10(b) and Rule 10(b)-5 of the Securities Exchange Act of 1934; joint and several liability for supervisors and control persons of Redstone Securities, Inc. under the Indiana Securities Act pursuant to I.C. 23-2-19(d) and Kirchof v. Selby 703 N.E.2nd 651; common-law fraud and misrepresentation; breach of fiduciary duty and constructive fraud; that their accounts were churned; that the trading activity in the accounts was unsuitable; that no reasonable basis existed to justify the trading activity in the accounts; violation of NASD Rule 2310 and Notice to Members 96-32 and 96-60; violation of Sections 2110, 2310, 2120 and 3010 of the Conduct Rules of the NASD; violation of Section 20(A) of the Securities Exchange Act; liability of Respondent Redstone Securities through the doctrine of Respondeat Superior; negligence and negligent supervision; civil theft; and breach of contract. In the Michaelis LLP's prayer for damages it sought, punitive damages and its remedies available under the Indiana Securities Act including net out-of-pocket losses of \$49,167.00 costs of \$5,624.75, statutory interest pursuant to the Indiana Securities Act of \$8,222 and attorney fees pursuant to the Indiana Securities Act of \$31,506.88 for total recoverable damages of \$94,520.63 pursuant to IC 23-2-1-19.

Claimant Mark Phillippe alleged that the Respondents violated the Indiana Securities Act Section 23-2-1-12, which prohibits any person in connection with the offer, sale or purchase of any security, either directly or indirectly, (1) to employ any device, scheme or artifice to defraud, or (2) make any untrue statements of material fact or to admit to state a material fact necessary in order to make the statements made in light of the circumstances under which they are made, not misleading, or (3) to engage in any act, practice or course of business which operated or would operate as a fraud or deceit upon any person.

From February 6, 1997 to November 17, 1998 Mark Phillippe's consolidated accounts sustained losses of \$90,332.89. Relative to the equity in the account, Mark Phillippe's investment portfolio was turned over 19.17 times and had an annual cost maintenance of 73.78%.

In addition to violations of the Indiana Securities Act, Mark Phillippe alleged violations of: Section 10(b) and Rule 10(b)-5 of the Securities Exchange Act of 1934; joint and several liability for supervisors and control persons under the Indiana Securities Act pursuant to I.C. 23-2-19(d) and Kirchof v. Selby 703 N.E.2nd 651; common-law fraud and misrepresentation; breach of fiduciary duty and constructive fraud; that their accounts were churned; that the trading activity in the accounts was unsuitable; that no reasonable basis existed to justify the trading activity in the accounts; violation of NASD Rule 2310 and Notice to Members 96-32 and 96-60; violation of Sections 2110, 2310, 2120 and 3010 of the Conduct Rules of the NASD; violation of Section 20(A) of the Securities Exchange Act; liability of Respondent Redstone Securities through the doctrine of Respondeat Superior; negligence and negligent supervision; civil theft; and breach of contract. In the Mark Phillippe's prayer for damages he sought, punitive damages and its remedies available under the Indiana Securities Act including net out-of-pocket losses of \$90,332.89, costs of \$5,624.75, statutory interest pursuant to the Indiana Securities Act of \$26,578 and attorney fees pursuant to the Indiana Securities Act of \$61,267.82 for total recoverable damages of \$183,803.46 pursuant to IC 23-2-1-19.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimants were experienced investors with substantial incomes and net worth, able to bear the risks of loss. It was also stated that the Claimants sought speculative situations to capture substantial gains.

RELIEF REQUESTED

Claimant Michaelis requested an award against Respondents in an amount including the following:

1. Damages of approximately \$49,167;
2. Damages as calculated under a "well managed" theory;

3. Lost interest of 8% per year, as provided by IC 23-2-1-19(a);
4. Attorneys' fees and costs of arbitration (including expert witness fees, expenses and accounting fees) as provided by IC 23-2-1-19(a) and/or IC34-4-30-1(4)(7);
5. Pre and post award interest at the statutory rate;
6. Punitive damages; and
7. Damages under Indiana Civil Theft Statutes.

Claimant Phillippe requested an award against Respondents in an amount including the following:

1. Damages of approximately \$90,333;
2. Damages as calculated under a "well managed" theory;
3. Lost interest of 8% per year, as provided by IC 23-2-1-19(a);
4. Attorneys' fees and costs of arbitration (including expert witness fees, expenses and accounting fees) as provided by IC 23-2-1-19(a) and/or IC34-4-30-1(4)(7);
5. Pre and post award interest at the statutory rate;
6. Punitive damages; and
7. Damages under Indiana Civil Theft Statutes.

Respondents requested that the claims asserted against them be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

AWARD

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

1. Respondent Redstone Securities Inc is jointly and severally liable to claimants and each of them for failure to supervise its employees properly and for respondent Rubin's conduct, *infra*, under the theory of *respondeat superior*.
2. Respondent Evgeny Rubin is jointly and severally liable to claimants and each of them for engaging in unsuitable trading activities on behalf of claimants and breaching his fiduciary duties to them.

3. No finding is made against any of the other respondents or on any of the other claims.
4. Damages for trading losses, attorney fees and costs are awarded to claimant Michaelis Development LLP in the total amount of \$48,412.
5. Damages for trading losses, attorney fees and costs are awarded to claimant Mark J Phillippe in the total amount of \$93,308.
6. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
8. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 = \$300.00

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(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Redstone Securities, Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with Panel x \$1,125.00		= \$1,125.00
Pre-hearing conference(s):	February 11, 2000	1 session
Six (6) Hearing sessions x \$1,125.00		= \$6,750.00
Hearing Date(s):	June 13, 2000	2 sessions
	June 14, 2000	2 sessions
	<u>June 15, 2000</u>	<u>2 sessions</u>
Total Forum Fees		= \$7,875.00

The Arbitration Panel has assessed \$3,937.50 of the forum fees jointly and severally to Michaelis Development, LLP and Mark J. Phillippe.

The Arbitration Panel has assessed \$3,937.50 of the forum fees jointly and severally to Redstone Securities, Inc. and Evgeny Rubin, Jr.

Fee Summary

Claimants, Michaelis Development, LLP and Mark J. Phillippe, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$3,937.50</u>
Total Fees	= \$4,237.50
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance Due NASD Regulation, Inc.	= \$2,812.50

Respondent, Redstone Securities, Inc., shall be and hereby is liable for:

<u>Member Fees</u>	= <u>\$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	= <u>\$1,500.00</u>
Balance Due NASD Regulation, Inc.	= \$3,100.00

Respondents, Redstone Securities, Inc. and Evgeny Rubin, Jr. shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= <u>\$3,937.50</u>
Balance Due NASD Regulation, Inc.	= \$3,937.50

All balances are due to NASD Regulation, Inc.

Dated:

/s/ William H. Tobin
William H. Tobin, Esq.
Public Arbitrator, Presiding Chair

/s/ David A. Pace
David A. Pace
Public Arbitrator

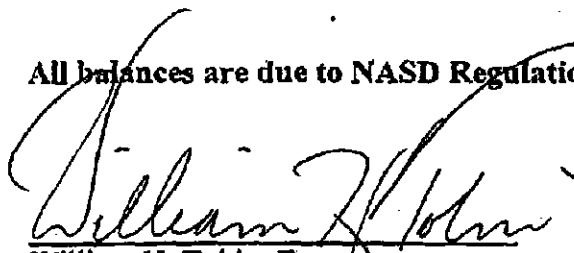
/s/ Jane Moon
Jane Moon
Industry Arbitrator

August 2, 2000

July 24, 2000

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All balances are due to NASD Regulation, Inc.



William H. Tobin, Esq.
Public Arbitrator, Presiding Chair

David A. Pace
Public Arbitrator

Jane Moon
Industry Arbitrator

Dated:

08/02/00 WED 10:01 FAX

NASD REGULATION

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All balances are due to NASD Regulation, Inc.

Dated:

William H. Tobin, Esq.
Public Arbitrator, Presiding Chair



David A. Pace
Public Arbitrator

Jane Moon
Industry Arbitrator

8-2-00

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 99-03104
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All balances are due to NASD Regulation, Inc.

Dated:

William H. Tobin, Esq.
Public Arbitrator, Presiding Chair

David A. Pace
Public Arbitrator

Jane Moon
Jane Moon
Industry Arbitrator

7-24-2000