

95-9-22

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

William A. Muller

96-05086

Name of Respondents

Island Securities, Inc.  
Jonathan E.S. Bekhor  
Frank Duca  
Shakespeare Newsome  
John J. Labeck  
Michael Galterio  
John Lee

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**REPRESENTATION**

For Claimant William A. Muller ("Claimant") appeared Steven J. Popkin, Esq., a sole practitioner with offices in Brooklyn, New York.

For Respondents Island Securities, Inc. ("IS"), Jonathan E.S. Bekhor ("Bekhor") and John Lee "Lee") appeared Jeffrey H. Weinberger of the firm Winick & Rich, P.C., however, IS and Lee did not appear at the hearing in this matter and Respondent Bekhor appeared *pro se*.

Respondent Frank Duca ("Duca") did not enter an appearance in this matter.

Respondent Shakespeare Newsome ("Newsome") appeared *pro se*.

Respondent John J. Labeck ("Labeck") did not enter an appearance in this matter.

Respondent Michael Galterio ("Galterio") appeared *pro se*.

**CASE INFORMATION**

Statement of Claim was filed on October 25, 1996.

Claimant's Submission Agreement was signed on November 4, 1996.

Respondents IS, Bekhor and Lee filed a Joint Statement of Answer on February 10, 1997.  
Respondent IS did not file a signed Submission Agreement.  
Respondent Bekhor did not file a signed Submission Agreement.  
Respondent Lee did not file a signed Submission Agreement.

Respondent Duca did not file a Statement of Answer or a signed Submission Agreement.

Respondent Newsome filed a Statement of Answer on February 14, 1997.  
Respondent Newsome's Submission Agreement was signed on February 21, 1997.

Respondent Labeck did not file a Statement of Answer or a signed Submission Agreement.

Respondent Galterio filed a Statement of Answer on January 5, 1997.  
Respondent Galterio's Submission Agreement was signed on January 6, 1997.

**HEARING INFORMATION**

Pre-Hearing Conference:	June 24, 1997	One Session
Hearing Date/Sessions:	March 23, 1998	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

**CASE SUMMARY**

Claimant maintained that he was an unsophisticated investor with little or no investment experience. Claimant stated that in mid 1980, he opened a tax free mutual fund with Duca, and at this time, advised Duca that his primary investment objective was long-term safety in a conservative, tax free vehicle. Claimant alleged that in, August 1994, Duca convinced Claimant to open a Customer Day Trading Account (the "account"). Claimant further alleged that Duca advised him that his account would be pooled with other accounts so that all losses would be covered by the gains in the pooled accounts with the ultimate profits to be distributed pro-rata amongst the customers. Claimant also alleged that Duca further advised him that the rate of return on his account would be greatly increased, that he could double his rate of return, that his rate of risk would not be increased compared to the mutual fund, and that such return would remain tax free income. Claimant asserted that he was never advised that his account involved risky and highly speculative trades which were transacted on the NASDAQ Small Order Execution System in an attempt to capture short term market maker spreads between listed bid and asked prices on NASDAQ traded stocks. Claimant further asserted that Respondents churned his account, generating 1,000 trades in eight months.

IS, Bekhor, and Lee, collectively referred to as "Respondents", denied having any knowledge of what Duca might have represented to Claimant. Respondents asserted that Bekhor did not become an officer of IS, or begin to operate IS, until May 31, 1995, and further that Lee did not become an officer of IS until mid-August 1995. Respondents further asserted that any losses incurred in Claimant's account were generated by Duca, Newsome, or Labeck, and, upon

information and belief, not by Galterio.

Newsome maintained that Claimant's account was given to him by Duca, on or about May 11, 1995. Newsome further maintained that he day traded Claimant's account until July 1995, when Lee asked him to cease trading in the account. Newsome also maintained that during the period of, May 11, 1995 to July 1995, he determined that he made approximately \$98.00 for Claimant's account.

Labeck did not file an answer to the allegations contained in the Statement of Claim.

Galterio maintained that prior to trading Claimant's account, he checked Claimant's file for all properly executed agreements and paperwork and found that all was in order. Galterio maintained that in conversations with Claimant, it was never implied or stated that Claimant was an unsophisticated investor or that he desired investments in conservative, long-term, low risk, tax-free instruments. Galterio asserted that at no time did he tell or imply to Claimant that his: rate of return would double, that the account would be pooled with other Day Trading accounts or that loses would be covered by gains in the pooled accounts, and that the gains would remain tax free. Galterio maintained that he was not privy to phone calls between Claimant and Duca, but to his knowledge Claimant was aware of the risks of trading. Galterio further maintained that all confirmations and statements were prepared by IS's clearing firm.

**RELIEF REQUESTED**

Claimant requested:

- (a) A sum to be determined by the arbitrators based on actual losses sustained by Claimant, anticipated to be no less than the sum of \$60,000.00;
- (b) A sum to be determined by the arbitrators based on the amount of commissions generated by all Respondents;
- (c) The equivalent of a marker rate interest of return on the \$18,843.00 margin call from August 17, 1995 to date;
- (d) Punitive damages in an amount to be assessed by the arbitrators; and
- (e) Such other and further relief as the panel deems just and proper, including interest, costs and disbursements.

IS, Bekhor and Lee requested that the Statement of Claim be dismissed in its entirety.

IS, Bekhor and Lee, in their cross-claim, requested that should they be deemed liable for any injuries sustained by Claimant, they are entitled to indemnification for any such award by Duca, Newsome, and LaBeck. Further, IS, Bekhor, and Lee requested reimbursement for their costs and attorneys fees from Duca, Newsome, and LaBeck.

Duca did not file a Statement of Answer.

Newsome requested that the Statement of Claim be dismissed in its entirety.

Labeck did not file a Statement of Answer.

Galterio requested that the Statement of Claim be dismissed in its 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 remains on file with NASD Regulation.

Galterio entered his appearance telephonically, due to a medical condition that prevented him from appearing in person.

The panel made the following determinations concerning: Duca and Labeck, who did not file Statements of Answer and a Submission Agreement, and did not appear at the hearing in this matter; IS and Lee who did not file a Submission Agreement and did not appear at the hearing in this matter; and Bekhor who did not file a Submission Agreement:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Duca, Labeck, IS, Lee and Bekhor were persons associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Duca, Labeck, IS, Lee and Bekhor pursuant to Rules 10201 and 10301 of the Code.
3. The panel found that Duca and Labeck were required to file a Statement of Answer and a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that Duca and Labeck received insufficient notice of this proceeding and were dismissed without prejudice.
4. The panel found that IS, Lee and Bekhor were required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code.
5. In addition, in accordance with Rules 10310, 10315, and 10318 of the Code, the panel found that NASD Regulation provided IS and Lee with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without IS and Lee whose absences were unexcused.

**AWARD**

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

1. IS be and hereby is liable and shall pay to Claimant the sum of \$50,300.00, plus interest from the date of the award until the date the award is paid.
2. All claims against Newsome are hereby dismissed.
3. All claims against Lee are hereby dismissed.
4. All claims against Labeck, who received insufficient notice of this proceeding, are hereby dismissed without prejudice.
5. All claims against Bekhor are hereby dismissed.
6. All claims against Duca, who received insufficient notice of this proceeding, are hereby dismissed without prejudice.
7. All claims against Galterio are hereby dismissed.
8. All requests for punitive damages and attorneys' fees are hereby denied.
9. The Cross-Claim of Respondents Island, Bekhor and Lee is hereby dismissed.
10. All other requests for relief are hereby denied.
11. IS be and hereby is liable and shall pay to Claimant the sum of \$500.00 as reimbursement of the Hearing Session Deposit previously deposited by Claimant with NASD Regulation.

**FORUM FEES**

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$150.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

1 Pre-hearing conference x \$300.00	=	\$ 300.00
2 Hearing sessions x \$500.00	=	<u>\$1,000.00</u>
Total Forum Fees	=	\$1,300.00

1. IS be and hereby is for the sum of \$1,300.00, representing the total forum fees


assessed. Claimant previously deposited \$500.00 with NASD Regulation, therefore, IS shall pay the balance of \$800.00.

2. IS be and hereby is liable and shall pay to Claimant the sum of \$500.00, as reimbursement of the hearing session deposit as indicated in the "Award" section above.
3. IS be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$1,400.00, representing the unpaid Cross-Claim filing fee of \$500.00, the unpaid Cross-Claim hearing session deposit of \$600.00 and the unpaid member surcharge of \$300.00.
4. Claimant be and hereby is liable for the sum of \$500.00, representing the postponement fee assessed. Claimant previously deposited \$500.00 with NASD Regulation, Inc. which has been applied to this fee, therefore, Claimant does not owe this sum.

Fees are payable to NASD Regulation, Inc.


97002

**ARBITRATORS' SIGNATURES**

  
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Allen D. Sklar  
Public Arbitrator

Date of decision: May 12, 1998

I, Allen D. Sklar, 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.

  
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Allen D. Sklar

ARBITRATORS' SIGNATURES



Michael E. Curan, Esq.  
Chairperson - Public Arbitrator


Date of decision: May 12, 1998

I, **Michael E. Curan, 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.



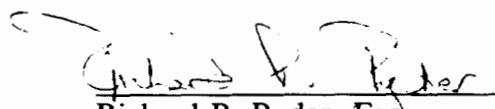
Michael E. Curan, Esq.

**ARBITRATORS' SIGNATURES**

  
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Richard P. Ryder, Esq.  
Industry Arbitrator

Date of decision: May 12, 1998

I, **Richard P. Ryder, 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.

  
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Richard P. Ryder, Esq.