

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Steven Katz and Rebecca Katz, individually and on behalf
of ABC Print Frame Limited Inc. Target Benefit Trust

v.

01-03229
Denver, Colorado

Respondents

Montrose Capital Management, LTD.
Michael E. Wallace, Marshall I. Baron,
John David Telfer, Michael B. Ajzenman,
Arthur Goldberg, David R. Jacaruso,
Joseph M. Scotti, Craig S. Scotti,
Steven Rabinoviciz, Eric S. Collado,
Robert J. Winston, Shawn Cantor,
Scott D. Bobrow, Charles A. Mayo
and Curtis Kramer

Nature of Dispute: Customers v. Terminated Member, Non-Members and Associated Persons

REPRESENTATION OF PARTIES

Steven Katz and Rebecca Katz, individually and on behalf of ABC Print Frame Limited Inc. Target Benefit Trust, hereinafter referred to as "**Claimants**" were represented by Daniel W. Bonifazi, Esq., of Pelz & Bonifazi, P.C., Denver, Colorado.

Respondents Montrose Capital Management, LTD. ("**Montrose**"), Marshall I. Baron ("**Marshall I. Baron**"), Arthur Goldberg ("**Goldberg**"), Steven Rabinoviciz ("**Rabinoviciz**"), Eric S. Collado ("**Collado**"), Charles A. Mayo ("**Mayo**") and Scott D. Bobrow ("**Bobrow**") did not appear.

Respondent Curtis Kramer ("**Kramer**") was represented by Scott D. Stechman, Esq., of Lehman & Eilen LLP, Uniondale, New York, until his notice of withdrawal on or about August 25, 2003.

Respondent Michael E. Wallace ("**Wallace**") was represented by Arthur P. Fisch, Esq., New York, New York.

Respondent John David Telfer ("**Telfer**") appeared pro se.

Respondent Michael B. Ajzenman (“**Ajzenman**”) was represented by Michael P. Gilmore, Esq., of Sims Moss Kline & Davis, LLP, Mineola, New York until his notice of withdrawal filed on or about November 12, 2003.

Respondents David R. Jacaruso (“**Jacaruso**”), Joseph M. Scotti (“**Joseph Scotti**”) and Craig S. Scotti (“**Craig Scotti**”) were represented by Marc J. Bachman, Esq., of Gerste, Savage & Kaplowitz LLP, New York, New York.

Respondent Robert J. Winston (“**Winston**”) was represented by Robert L. Herskovits, Esq., of the Law Offices of Michael F. Bachner, New York, New York.

Respondent Shawn Cantor (“**Cantor**”) was represented by Eden L. Rohrer, Esq., of Gersten, Savage & Kaplowitz, New York, New York until her notice of withdrawal on or about November 4, 2003.

CASE INFORMATION

The Statement of Claim was filed on or about June 13, 2001. Submission Agreements of Claimants were signed on or about June 13, 2001.

A Statement of Answer was filed by Respondent Ajzenman on or about September 7, 2001. Submission Agreement of Respondent Ajzenman was signed on or about September 7, 2001.

A Statement of Answer was filed by Respondent Cantor on or about September 19, 2001. Submission Agreement of Respondent Cantor was signed on or about September 18, 2001.

A Statement of Answer was filed by Respondent Winston on or about October 1, 2001.

A Statement of Answer was filed by Respondent Kramer on or about October 29, 2001. Submission Agreement of Respondent Kramer was signed on or about October 27, 2001.

A Joint Statement of Answer was filed by Respondents Joseph Scotti, Craig Scotti and Jacaruso on or about April 11, 2002.

A Statement of Answer was filed by Respondent Telfer on or about April 22, 2002. Submission Agreement of Respondent Telfer was signed on or about April 22, 2002.

Respondent Ajzenman filed a Motion to Dismiss on or about September 7, 2001.

Claimants submitted a Motion to Preclude Answers for Respondents Wallace, Telfer, Goldberg, Jacaruso, Joseph Scotti, Craig Scotti, Rabinociciz, Collado and Mayo on or about September 28, 2001.

Respondent Kramer filed a Motion for a More Definite Statement of Claim on or about October 29, 2001.

Respondent Cantor filed a Motion to Dismiss on or about September 19, 2001. Claimants filed a Response to Cantor's Motion to Dismiss on or about October 9, 2001.

Respondents Joseph Scotti, Craig Scotti and Jacaruso filed a Motion to Dismiss on or about April 11, 2002. Claimants filed a Response to Joseph Scotti, Craig Scotti and Jacaruso's Motion to Dismiss on or about May 3, 2002.

Respondent Telfer filed a Motion to Dismiss on or about April 22, 2002. Claimant filed a Response to Telfer's Motion to Dismiss on or about June 25, 2002.

Claimants filed a Motion to Amend Statement of Claim on or about November 5, 2002. Respondent Telfer filed a Response in Opposition to Claimants' Motion to Amend Statement of Claim on or about November 17, 2002. Respondent Kramer filed a Response in Opposition to Claimants' Motion to Amend Statement of Claim on or about November 18, 2002. Respondent Ajzenman filed a Response in Opposition to Claimants' Motion to Amend Statement of Claim on or about November 18, 2002.

CASE SUMMARY

Claimants asserted causes of action including the following: suitability, churning, failure to supervise, unauthorized trading, negligent supervision, control person liability, violation of Colorado blue sky laws, violation of Colorado Consumer Protection Act, breach of fiduciary duty, breach of contract and negligence. The causes of action related to Claimants' allegation that Respondents ignored their investment goals of long-term growth with minimal risk and instead implemented an aggressive strategy that was concentrated in numerous high-risk securities. Claimants further alleged that neither this trading strategy nor the securities purchased were suitable and that Respondents used this strategy to churn their accounts and generate excessive fees.

Respondent Ajzenman denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants' claims do not adequately set forth any specific rule violation of NASD, or any state or federal laws which are the proximate cause of Claimants' alleged losses; Claimants were fully apprised of all activity in their accounts and failed to object to any of the wrongdoing and are therefore barred from seeking any recovery by their own unclean hands; and Claimants received notice of all transactions and by their own conduct and words agreed to accept all transactions in the account.

Respondent Cantor denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Cantor discharged his responsibilities in a professional and ethical manner and that all of Cantor's actions were within the parameters of accepted brokerage procedure and all

exchange and governmental regulations; Claimants' claims are barred by the applicable principles of waiver, ratification, and estoppel; and all risks inherent in investing in the securities markets and in the specific investments purchased were fully explained to the Claimants and they knowingly, willingly and voluntarily assumed the risks of investing in the market.

Respondent Winston denied the allegations set forth in the Statement of Claim and adopted and incorporated the affirmative defenses set forth by Respondent Cantor.

Respondents Joseph Scotti, Jacaruso and Craig Scotti denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants' claims failed to state a claim upon which relief can be granted; any losses suffered by Claimants were the result of market conditions and/or fluctuations normally associated with investment in the securities market; Claimants' claims are barred by the applicable principles of waiver, ratification, and estoppel; Claimants' comparative fault, lack of diligence and failure to conduct their financial affairs reasonably and responsibly bars any recovery of damages, and Respondents Joseph Scotti, Jacaruso and Craig Scotti never had any involvement with Claimants and never exercised any supervisory control over either Claimants' accounts or the registered representatives who managed Claimants' accounts.

Respondent Kramer denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants were experienced and knowledgeable investors and had knowledge of and assumed the risks incident to investing in securities; Claimants knew and understood the risks involved in their accounts and represented themselves as willing and able to assume those risks and Claimants authorized and directed the transactions in their accounts, and are estopped from claiming any losses with respect to those transactions.

Respondent Telfer denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants' claims failed to state a claim upon which relief can be granted; the damages suffered by Claimants have no casual relationship with any act committed by or legally attributable to Telfer and the purported wrongdoing of Telfer was not the proximate cause of the losses from which Claimants seek recovery, and Claimants are barred by the doctrines of ratification, waiver, and estoppel.

RELIEF REQUESTED

Claimants requested an award in the amount of \$664,001.15 in compensatory damages. In addition, Claimants requested disgorgement of commissions in the amount of \$482,086.75, plus interest, treble damages, attorney's fees, costs, expert witness fees, and any other relief that the Panel deemed just and equitable.

Respondents Joseph Scotti, Jacaruso and Craig Scotti requested that the claims asserted against them be denied in their entirety and that they be awarded their costs attorney's fees and any other relief that the Panel deemed just and proper.

Respondent Kramer requested that the claims asserted against him be denied in their entirety and that he be awarded his costs, attorneys' fees and any other relief that the Panel deemed just and proper. In addition, Respondent Kramer requested that this matter be expunged from his registration records maintained by the Central Registration Depository ("CRD").

Respondent Telfer requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and any other relief that the Panel deemed just and proper.

Respondent Ajzenman requested that the claims asserted against him be denied in their entirety and that he be awarded his costs, attorneys' fees and any other relief that the Panel deemed just and proper. In addition Respondent Ajzenman requested that this matter be expunged from his registration records maintained by the Central Registration Depository ("CRD").

Respondent Cantor requested that the claims asserted against him be denied in their entirety and that he be awarded his costs, attorneys' fees and any other relief that the Panel deemed just and proper.

Respondent Winston requested that the claims asserted against him be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned Panel has determined that Respondents Montrose Capital Management, LTD., Michael E. Wallace, Marshall I. Baron, Arthur Goldberg, Steven Rabinoviciz, Eric S. Collado, Scott D. Bobrow and Charles A. Mayo 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 NASD Code of Arbitration Procedure (the "Code").

Respondents Montrose Capital Management, LTD., Michael E. Wallace, Marshall I. Baron, Arthur Goldberg, David R. Jacaruso, Joseph M. Scotti, Craig S. Scotti, Steven Rabinoviciz, Eric S. Collado, Robert J. Winston, Scott D. Bobrow, and Charles A. Mayo did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On or about August 1, 2001, Claimant withdrew all claims against Respondent Marshall I. Baron with prejudice. The Panel did not adjudicate any claims against Respondent Baron.

All proceedings against Respondent Montrose Capital Management, LTD. are stayed as a result of the Securities Investor Protection Corporation ("SIPC") liquidation filed on or about December 7, 2001. The Panel did not adjudicate any claims against Respondent Montrose Capital Management, LTD.

On or about November 12, 2002, the Panel entered an Order denying Claimant's Motion to Amend the Statement of Claim.

In its Order entered on September 9, 2002, the United States District Court, Eastern District of New York, ordered that the above-captioned arbitration case be stayed. In its Order entered September 24, 2003, the United States District Court, Eastern District of New York, modified its earlier Order to apply the stay solely to Respondent Robert J. Winston and allowed this arbitration to proceed against the remaining Respondents.

At the arbitration hearing, Claimants informed the Panel that they had settled all claims with Respondent Shawn Cantor and he was dismissed with prejudice. The Panel did not adjudicate any claims against Respondent Shawn Cantor.

After the conclusion of the hearing, on or about November 26, 2003 Claimant submitted a Notice of Dismissal, which reflected the following:

1. Pursuant to settlement, Claimants have voluntarily dismissed all claims against Respondents Curt Kramer and Charles Mayo with prejudice;
2. Based on the evidence presented at hearing, Claimants voluntarily dismissed Respondent Craig Scotti with prejudice;
3. Respondent Bobrow was dismissed with prejudice pursuant to a settlement between Bobrow and the Claimants ;
and
4. Respondent Ajzenman was dismissed with prejudice pursuant to a settlement between Ajzenman and the Claimants.

The Panel did not adjudicate any claims asserted against the aforementioned Respondents.

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 originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

1. Claimants, Steven Katz and Rebecca Katz, individually and on behalf of ABC Print Frame Limited Inc.'s, claims against remaining Respondents, David R. Jacaruso, Joseph M. Scotti, Eric S. Collado, Arthur Goldberg, Steven Rabinoviciz, John David Telfer, and Michael E. Wallace are hereby denied and dismissed with prejudice;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including treble damages, are denied with prejudice and;
3. 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 Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 600

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Pre-hearing sessions with Panel x \$ 1,200 = \$ 6,000

Pre-hearing conferences: 05/09/2002 1 session
10/28/2002
01/09/2003
03/31/2003
06/10/2003

Six (6) Hearing sessions with Panel x \$ 1,200 = \$ 7,200

Hearing Dates:	11/18/2003	2 sessions
	11/19/2003	2 sessions
	11/20/2003	2 sessions

Total Forum Fees = \$ 13,200

The Arbitration Panel has assessed \$ 6,600 of the forum fees to Steven Katz and Rebecca Katz, individually and on behalf of ABC Print Frame Limited Inc. Target Benefit Trust

The Arbitration Panel has assessed \$ 6,600 of the forum fees jointly and severally to Joseph M. Scotti, David R. Jacaruso, Eric S. Collado, Arthur Goldberg, Steven Rabinoviciz, John David Telfer and Michael E. Wallace.

Fee Summary

Claimant, Steven Katz and Rebecca Katz, individually and on behalf of ABC Print Frame Limited Inc. Target Benefit Trust is liable for:

Initial Filing Fee	= \$ 600
<u>Forum Fees</u>	= \$ 6,600
Total Fees	= \$ 7,200
<u>Less payments</u>	= \$ 1,700
Balance Due NASD Dispute Resolution	= \$ 5,500

Respondents, Joseph M. Scotti, David R. Jacaruso, Eric S. Collado, Arthur Goldberg, Steven Rabinoviciz, John David Telfer and Michael E. Wallace, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 6,600
Total Fees	= \$ 6,600
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 6,600

All balances are due to NASD Dispute Resolution pursuant to Rule 10330(g) of the Code of Arbitration

ARBITRATION PANEL

Gilbert L. McSwain, Esq. - Public Arbitrator, Presiding Chair
Bruce W. Brady, CPA - Public Arbitrator
Jonathan H. Larson, Esq.- Non-Public Arbitrator

Concurring Arbitrators:

Gilbert L. McSwain, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Bruce W. Brady, CPA
Public Arbitrator

Signature Date

Jonathan H. Larson, Esq.
Non-Public Arbitrator


Signature Date

1/9/04
Date of Service (NASD use only)

ARBITRATION PANEL

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Bruce W. Brady, CPA - Public Arbitrator
Jonathan H. Larson, Esq. - Non-Public Arbitrator

Concurring Arbitrators



Gilbert L. McSwain, Esq.
Public Arbitrator, Presiding Chair

Jan. 9, 2004
Signature Date

Bruce W. Brady, CPA
Public Arbitrator

Signature Date

Jonathan H. Larson, Esq.
Non-Public Arbitrator

Signature Date

1/9/04

Date of Service (NASD use only)

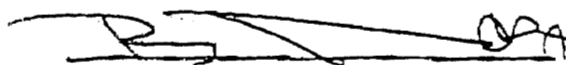
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Public Arbitrator, Presiding Chair

Signature Date



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Public Arbitrator

1/9/04

Signature Date

Jonathan H. Larson, Esq.
Non-Public Arbitrator

Signature Date

1/9/04

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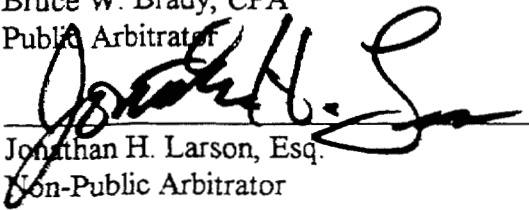
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Public Arbitrator, Presiding Chair

Signature Date

Bruce W. Brady, CPA
Public Arbitrator

Signature Date


Jonathan H. Larson, Esq.
Non-Public Arbitrator

Signature Date

1/8/04

1/9/04
Date of Service (NASD use only)