

Award
NASD Dispute Resolution, Inc.

In the Matter of ~~the~~ Arbitration Between

Names of Claimants

Sidney and Leah Nickin

Case No. 99-03728

Names of Respondents

Ryan, Beck & Co.
Michael Varajon

REPRESENTATION OF PARTIES

For Sidney and Leah Nickin, hereinafter also collectively referred to as "Claimants": **Robert** Wayne Pearce, Esq., Boca Raton, Florida and Debra Ribitwer, Esq., Birmingham, Michigan.

For Ryan Beck & Co. ("Ryan Beck") and Michael Varajon ("Varajon"), hereinafter also collectively referred to as "Respondents": **David Pollack, Esq. of Stearns Weaver Miller Weissler, Alhadeff & Sitterson, P.A.**, Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 11, 1999.

Claimants signed the Uniform Submission Agreement on: August 11, 1999

Statement of Answer filed by Respondents on or about: November 18, 1999.

Respondent Ryan Beck's Uniform Submission Agreement was executed on May 4, 2000 by Robert Berson, Executive Vice President, on behalf of the Firm.

Respondent Michael Varajon signed the Uniform Submission Agreement on: January 31, 2001

CASE SUMMARY

Claimants asserted the following **causes of** action: violations of Chapter 517.301, Florida Statutes (Florida Securities Laws); violations of Section 812.014 and 772.10, Florida Statutes (Civil Theft). Further, **Claimants** alleged the following: During the period July 1997 through August 1998, Respondents **misrepresented** material facts concerning Respondent Varajon's experience as a portfolio manager, **his performance**, and the **nature**, mechanics and **risks of the** trading strategies employed in Claimants' joint account. Further, Respondents engaged in unsuitable transactions on margin and **churned** Claimants' account.

Unless specifically **admitted** in their **Statement of Answer**. Respondents denied **the** allegations of wrongdoing contained in the Statement of Claim and asserted **the following**: Claimants' Statement of Claim **fails to state a** cause of action; Claimants were **highly** intelligent, **experienced** and sophisticated investors with a net worth in the millions and income of **over \$1,000,000.00 in 1998**; Claimants had at least ten **other** open brokerage accounts at five other firms at the time they traded at Ryan Beck; that **Claimants** engaged in speculative, short **term** trading in certain **of those** accounts; **the** transactions in Claimants' account were suitable for **them**; Claimants were well informed regarding their holdings, the performance of **their** account and the relevant **risks**; Claimants never raised any **concerns** regarding **the** unsuitability of the **investments**, the number of trades, or the amount of commissions they **were** charged; and, Respondents

acted appropriately and in good faith, in accordance with Claimants' instructions and did not act with any improper intent.

RELIEF REQUESTED

Claimants requested an award of damages, including punitive damages and treble damages, not to exceed \$1,000,000.00, costs of this proceeding, and such other relief deemed appropriate by the Panel. Further, Claimants requested that the issue of attorneys' fees be reserved for determination by a court of competent jurisdiction, in accordance with Florida law.

Respondents requested that an award be entered in their favor, that they be awarded their costs and attorneys' fees, pursuant to Florida Statutes Section 517.211 and 772.11, and such other relief deemed just and proper by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

Sidney Nickin died during the pendency of this matter. On or about October 10, 2000, Claimants' counsel submitted a Notice of Death and Substitution of Party. Attached to said document was a court order appointing Leah Nickin as Personal Representative of the Estate of Sidney Nickin. As such, the Estate of Sidney Nickin was substituted in for Sidney Nickin, individually.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Ryan Beck is found liable and shall pay to Claimants compensatory damages in the amount of \$133,000.00, inclusive of pre-judgment interest.
2. Respondents Ryan Beck and Varajon are found liable, jointly and severally, and shall pay to Claimants compensatory damages in the amount of \$10,000.00, inclusive of pre-judgment interest.
3. Claimants' requests for punitive damages and treble damages are denied.
4. The issue of entitlement to and amount, if any, of attorneys' fees to be awarded shall be determined by a court of competent jurisdiction, in accordance with Florida law.
5. All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$375.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

Forum Fees and Assessments

The 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:

Two (2) Pre-hearing sessions with the Panel x \$1,200.00		= \$ 2,400.00
Pre-hearing conference dates:	April 27, 2000	1 session
	October 16, 2000	1 session
Eight (8) Hearing sessions x \$1,200.00		= \$ 9,600.00
Hearing dates:	November 6, 2000	2 sessions
	November 7, 2000	2 sessions
	November 8, 2000	2 sessions
	November 9, 2000	2 sessions
Total Forum Fees		= \$12,000.00

The Panel has assessed the total forum fees of \$12,000.00 to Respondent **Ryan Beck**.

Fee Summary

Claimants be and hereby are **jointly and** severally liable for:

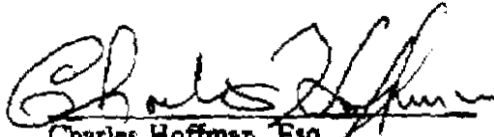
Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$375.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent **Ryan Beck** be and hereby **is** solely liable for:

Member Fees	= \$ 6,100.00
Forum Fees	= \$12,000.00
Total Fees	= \$18,100.00
Less payments	= \$ 6,170.00
Balance Due NASD Dispute Resolution, Inc.	= \$11,930.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures


Charles Hoffman, Esq
Public Arbitrator/Chairperson

1/26/01
Signature Date

Franz C. Thame
Public Arbitrator/Panelist

Signature Date

Ronald F. Rohe
Industry Arbitrator/Panelist

Signature Date

Date of Service (For NASD-DR office use only)

All balances *are* payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

Charles Hoffman, Esq.
Public Arbitrator/Chairperson

Signature Date

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Franz C. Flame
Public Arbitrator/Panelist

January 26, 2001
Signature Date

Ronald F. Rohe
Industry Arbitrator/Panelist

Signature Date

Date of Service (For NASD-DR office use only)

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

Charles Hoffman, Esq
Public Arbitrator/Chairperson

Signature Date

Franz C. Thame
Public Arbitrator/Panelist

Signature Date



Ronald F. Robc
Industry Arbitrator/Panelist

1-29-01
Signature Date

Date of Service (For NASD-DR office use only)