

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Henri Lipmanowicz, (Claimant) vs. Janssen-Meyers Associates, L.P. d/b/a Janssen/Meyers Associates, L.P. and Roan-Meyers Associates, L.P. d/b/a Roan/Meyers Associates, L.P., (Respondents) vs. Jeffrey Hodde (Third-Party Respondent)

Case Number: 00-03707

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Henri Lipmanowicz, hereinafter referred to as "Claimant": Robert S. Churchill, Esq., McLaughlin & Stern, LLP, New York, NY.

Respondents, Janssen-Meyers Associates, L.P. d/b/a Janssen/Meyers Associates, L.P. ("Janssen") and Roan-Meyers Associates, L.P. d/b/a Roan/Meyers Associates, L.P. ("Roan"), hereinafter collectively referred to as "Respondents": David A. Schrader, Esq., Schrader & Schoenberg, LLP, New York, NY (Mr. Schrader was with the law firm of Raice Paykin Krieg & Schrader LLP, New York, NY, when this claim was originally filed).

Third-Party Respondent, Jeffrey Hodde ("Hodde"), appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: August 22, 2000.

Claimant signed the Uniform Submission Agreement: August 11, 2000.

Joint Statement of Answer and Third-Party Claim filed by Respondents on or about: February 6, 2001.

Janssen signed the Uniform Submission Agreement: February 6, 2001.

Roan signed the Uniform Submission Agreement: February 6, 2001.

Hodde did not file a Statement of Answer or sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trades; unsuitability; forgery; violations of NASD rules; excessive trading; improper margin trading; failure to supervise; violations of federal and state laws; fraud; breach of contract; breach of the implied covenant of good faith and fair dealing; negligence; and breach of fiduciary duty. Claimant's claim involved the stocks of Alexion Pharm., Inc., Continental Inv't Corp., Data Race Inc., Techniclone Co., and Flotek Inds. Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Respondents obtained a signed account agreement and margin agreement from Claimant with regard to his account; the investments recommended to Claimant were consistent with Claimant's financial objectives and investment profile, and were suitable for Claimant; any losses suffered by Claimant were the result of market fluctuations, fluctuations in the price of specific stocks, or poor performance by specific stocks; and Claimant received written confirmations of all transactions in his account, and monthly statements, and had full knowledge of all transactions, which were authorized.

In their Third-Party Claim, Respondents asserted the following causes of action: indemnification and contribution.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$119,812.63, plus punitive damages in an amount to be determined by the Panel, together with attorneys' fees and the costs and disbursements of this action.

In their Answer and Third-Party Claim, Respondents requested judgment dismissing the Statement of Claim; in the event of any judgement, awarding indemnity and contribution against Hodde; awarding all costs and fees of this proceeding in Respondents' favor against Claimant; attorneys' fees; and such other and further relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Hodde did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

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. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$53,000.00 as compensatory damages, plus interest at the rate of 9% accruing from March 1, 1999 until date of payment. The Panel found liability against Respondents under respondeat superior, and as the controlling person under S.E.A. section 241, and for their own breach of supervisory obligations and negligence. Respondents' liability was found for the losses due to activities in Claimant's margin account. Respondents should have supervised Hodde closely and discovered the discrepancies in the signatures, which made them partly responsible directly for the loss. Claimant's own delay in notifying a proper officer of Respondents of other activities precludes any further award.
2. Claimant's request for punitive damages is hereby denied.
3. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$20,415.00 as attorneys' fees and the sum of \$537.50 as attorney disbursements. The Panel awarded attorneys' fees and disbursements because the Statement of Claim requested attorneys' fees, and Respondents submission to arbitration submitted the matters set forth in the Statement of Claim, thus rendering the matter for determination by the Panel. Respondents also requested attorneys' fees in their Statement of Answer. The Panel also awarded attorneys' fees and disbursements based on Respondents' negligence and breach of duty, together with their requiring an officer to verify signatures when the officer knew he did not have any knowledge about their validity, which precluded discovery of unauthorized signatures by Hodde, a person who they had reason to believe should have been carefully supervised.

4. Hodde is solely liable for and shall pay to Respondents the sum of \$26,500.00 as compensatory damages, plus interest at the rate of 9% accruing from March 1, 1999 until date of payment.
5. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
6. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
Third-Party Claim filing fee	= \$ 1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Janssen-Meyers Associates, L.P. d/b/a Janssen/Meyers Associates, L.P. and Roan-Meyers Associates, L.P. d/b/a Roan/Meyers Associates, L.P. are parties. Member fees have been assessed jointly and severally against Janssen-Meyers Associates, L.P. d/b/a Janssen/Meyers Associates, L.P. and Roan-Meyers Associates, L.P. d/b/a Roan/Meyers Associates, L.P., since they share the same broker-dealer number.

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

Adjournment Fees

Adjournments requested during these proceedings:

Apr. 15 & 16, 2002, adjournment by Claimant	= \$ 1,125.00
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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 Panel x \$1,125.00 = \$ 2,250.00

Pre-hearing conferences:	October 22, 2001	1 session
	February 14, 2002	1 session

Eight (8) Hearing sessions x \$1,125.00 = \$ 9,000.00

Hearing Dates:	February 12, 2002	2 sessions
	July 16, 2002	2 sessions
	July 17, 2002	2 sessions
	September 4, 2002	2 sessions

Total Forum Fees = \$11,250.00

The Panel has assessed all of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Adjournment Fee</u>	= \$ 1,125.00
Total Fees	= \$ 1,425.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondents are jointly and severally liable for:

Third-Party Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$11,250.00
Total Fees	= \$16,850.00
<u>Less payments</u>	= \$ 6,725.00
Balance Due NASD Dispute Resolution	= \$10,125.00

All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Martin Fogelman, Esq.	-	Public Arbitrator, Presiding Chair
Melvin Lyon	-	Public Arbitrator
Donald P. Delano	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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.

Martin Fogelman, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Melvin Lyon
Public Arbitrator

Signature Date



Donald P. Delano
Non-Public Arbitrator

Signature Date

November 5, 2002
Date of Service (For NASD Dispute Resolution use only)

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