

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jeremy Marshall, (Claimant) vs. Hornblower & Weeks, Inc. and Mark E. Golden, (Respondents)

Case Number: 01-00408

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Jeremy Marshall, hereinafter referred to as "Claimant": Ralph A. Gant, Esq., a sole practitioner, New York, NY.

Respondent, Hornblower & Weeks, Inc. ("Hornblower"): John Rooney, Hornblower & Weeks, Inc., New York, NY. Previously represented by: Chad N. Cagan, Esq., Sonnenblick, Parker & Selvers, Freehold, NJ and David M. Levy, Esq., Levy Boonshoft & Spinelli, P.C., New York, NY.

Respondent, Mark E. Golden ("Golden"), appeared *pro se*. Previously represented by: Lawrence R. Gelber, Esq., a sole practitioner, Brooklyn, NY and David M. Levy, Esq., Levy Boonshoft & Spinelli, P.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 23, 2001.
Claimant signed the Uniform Submission Agreement.

Joint Statement of Answer filed by Hornblower and Golden on or about: April 11, 2001.
Hornblower signed the Uniform Submission Agreement: May 15, 2001.
Golden signed the Uniform Submission Agreement: May 15, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trading; unsuitability; failure to sell when ordered by Claimant; mismarking confirmations; failure to properly supervise; respondeat superior; and failure to disclose margin trading. Claimant's claim involved the stocks of Dell Computer, Centura, Cornerstone Internet Solutions, and Visual Data Corp.

Unless specifically admitted in their Answer, Hornblower and Golden denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state any cause of action upon which relief can be granted; at all times, Claimant had or should have had full knowledge of all material facts concerning the investments he made, including the nature of the investments as well as the associated risks; the damages, if any, alleged to have been sustained by Claimant were caused, in whole or in part, by Claimant's failure to mitigate their damages; the damages allegedly suffered by Claimant were not proximately caused by any act or recommendation attributable to Respondents; Claimant's claims are barred because, to the extent representations were made regarding investments, they were merely expressions of opinion, not material fact, and as such are not actionable; Claimant directed and/or authorized all transactions made in his account; Claimant's claims are barred by the principals of laches, waiver, estoppel, and ratification; Hornblower acted at all times in accordance with proper brokerage procedure and industry rules and regulations governing the supervision of employees; Claimant's comparative fault, lack of diligence, and failure to manage his accounts reasonably and responsibly bars any recovery of damages herein; Claimant is not entitled to seek tort damages for purely economic loss in the absence of personal injury or injury to property, neither of which is alleged, since the underlying contract or contracts between the parties govern their respective rights and liabilities; any alleged breach of contract of Respondents does not constitute a substantial deviation from the applicable contract or contracts so as to constitute a legal violation or default thereunder; Respondents substantially complied with all terms and conditions of the subject contract or contracts; no alleged breach of contract caused damages to Claimants; and any alleged breach of contract by Respondents was induced or caused by Claimant's actions.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the amount of \$118,546.00;
- b. Interest at 9% per annum starting November 11, 1999;
- c. Punitive damages as determined by the Panel;
- d. Arbitration costs;
- e. Reasonable attorneys' fees;
- f. Referral to the Enforcement Division of the NASD; and
- g. Such other relief as the Panel may find appropriate.

Respondents requested that Claimant's Statement of Claim be, in all respects, dismissed, and that Respondents be awarded their fees and expenses, including attorneys' fees to the extent permitted by law, forum fees, and all other costs of this proceeding.

OTHER ISSUES CONSIDERED AND 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.

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 hereby directed to liquidate Claimant's account and forward the proceeds to Claimant.

Claimant is hereby directed to liquidate his account with Respondents.

2. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$82,970.00 as compensatory damages, less any amounts returned to Claimant from the liquidation of his account with Respondents, plus interest at the rate of 9% per annum accruing from March 31, 2000 until paid.
3. 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.
4. 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
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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 at the time of the events giving rise to the dispute. In this matter, Hornblower & Weeks, Inc. is a party.

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

Adjournment Fees

Adjournments requested during these proceedings:

Jan. 15, 16 & 17, 2002, adjournment by Golden	= \$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:	
August 24, 2001	1 session
May 9, 2002	1 session
Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Date:	
October 16, 2002	2 sessions
Total Forum Fees	= \$4,500.00

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
Total Fees	= \$ 300.00
Less payments	= \$1,425.00
Refund Due Claimant	= \$1,125.00

As stated in the "Award" section above, Respondents are jointly and severally liable and shall reimburse Claimant for the \$300.00 filing fee.

2. Hornblower is solely liable for:

<u>Member Fees</u>	= \$4,600.00
<u>Total Fees</u>	= \$4,600.00
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Golden is solely liable for:

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

4. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$4,500.00
<u>Total Fees</u>	= \$4,500.00
<u>Less payments</u>	= \$3,375.00
Balance Due NASD Dispute Resolution	= \$1,125.00

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

ARBITRATION PANEL

Hilary B. Miller, Esq.	-	Public Arbitrator, Presiding Chair
Joel P. Mellis, Esq.	-	Public Arbitrator
John J. Lynch, Jr.	-	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.



Hilary B. Miller, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Joel P. Mellis, Esq.
Public Arbitrator

Signature Date

John J. Lynch, Jr.
Non-Public Arbitrator

Signature Date

November 8, 2002

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

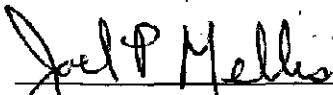
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Hilary B. Miller, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Joel P. Mellis, Esq.
Public Arbitrator

10/31/02
Signature Date

John J. Lynch, Jr.
Non-Public Arbitrator

Signature Date

November 8, 2002

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ARBITRATION PANEL

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Joel P. Mellis, Esq.	-	Public Arbitrator
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Hilary B. Miller, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Joel P. Mellis, Esq.
Public Arbitrator

Signature Date

John J. Lynch, Jr.
Non-Public Arbitrator

11/1/02
Signature Date

November 8, 2002

Date of Service (For NASD Dispute Resolution use only)