

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

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CASE: 04-01575

Elizabeth K. Hubler and Lorna B. Hubler, Claimants v. Hennion & Walsh, Inc. and Richard Hennion, Respondents

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**ATTORNEYS:**

For Claimants Elizabeth K. Hubler and Lorna B. Hubler (collectively "Claimants") appeared through their representative, Craig W. Hubler, Tigard, OH.

For Respondents Hennion & Walsh, Inc. and Richard Hennion (collectively "Respondents") appeared Keith W. Miller, Esq., of the firm Kirkpatrick & Lockhart, LLP, New York, NY.

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**NATURE OF DISPUTE:** Customers v. Member and Associated Person.

**DATE FILED:** March 5, 2004.

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**CASE SUMMARY:** Claimants alleged that Respondents churned the account when they began to excessively trade in order to generate commissions. Claimants further alleged that Respondents misappropriated a Puerto Rico bond held in Claimants' account. Claimants maintained that due to Respondents' actions, their account suffered losses. Claimants' claim involved mutual funds and municipal bonds.

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**ARBITRATOR'S REPORT:** See attached Exhibit "A".

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**Claim Data**

Claim: \$25,000.00  
Punitive: Unspecified  
Filing Fees: Unspecified  
Other: Unspecified

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**Award Data**

Award: \$11,000.00  
Punitive: \$0.00  
Filing Fees: \$425.00  
Other: \$0.00

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**AWARD:** The undersigned arbitrator has decided and determined 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 Claimants \$11,000.00. 2) All requests for punitive damages are denied. 3) All other relief requests are denied. 4) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimants deposited previously. 5) Respondents are jointly and severally liable and shall pay Claimants \$425.00 as reimbursement of the filing fee.


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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent Hennion & Walsh, Inc. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

ARBITRATOR  
Bernard M. Levine - Sole Public Arbitrator

AFFIRMATION

I, Bernard M. Levine, 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.

  
Bernard M. Levine

3/9/05  
Signature Date

March 28, 2005  
Date of Service (For NASD-DR office use only)

1. General comments:

While it is not necessary to write any justification for an arbitration award, I do want to give the parties some insight into some of the reasons behind my decision in this case. This is not meant to be an inclusive review of all the reasons behind my decision, but to help the parties gain an understanding of the decision.

2. Respondent:

The respondent has stated that a charge of churning cannot be sustained according to the NASD requirements for this claim. Regardless of this, it appears that the trading was excessive for an account whose primary stated aims were "Income" and "Safety". While respondent provided "justifications" for each of the trades in question, some of those justifications seemed weak and tenuous, at best. Many of these trades seemed more in the interest of the respondent than the claimants.

3. Claimants:

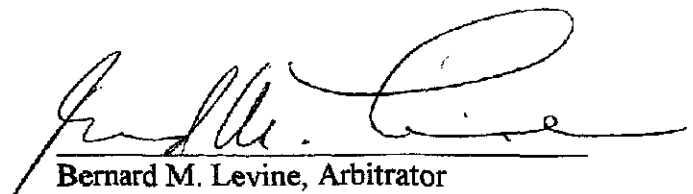
The panel recognizes the possibility that Elizabeth Hubler may well be suffering from dementia, though no evidence was submitted to sustain that claim. The key, however, was the ownership of this account, which was Elizabeth Hubler and Lorna Hubler, JTWROS. Taking her letter at face value, it appears that Lorna Hubler did not correctly understand the meaning of JTWROS. An excerpt from a description of JTWROS, taken from the Internet, indicates that,

"... When one or more persons hold title to an asset as Joint Tenants, each of them owns a 100 percent interest in the asset. When one Joint Tenant dies, each of the remaining Joint Tenants continues to own a 100 percent ownership interest. Ultimately, the sole surviving Joint Tenant owns the entire asset".

Accordingly, at all times during the life of this account, Lorna Hubler was an equal owner of the account, and therefore had the power (and responsibility) to take control of this account from her mother. During the numerous calls that she indicated she had with Richard Hennion, she only had to direct him to close the account, and that would have ended the situation.

4. Conclusion:

The panel concludes that there was misused responsibility on both sides. Richard Hennion (and Hennion & Walsh), engaged in questionable trading activities in this account. At the same time, Lorna Hubler had full power and authority to stop this practice by closing the account. Her failure to do so implies a de facto agreement with the handling of the account by the respondents.



Bernard M. Levine, Arbitrator