

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

: In the Matter of the Arbitration Between	:	
:	:	
: Anne Novotny	:	
:	: Claimant	: CASE #88-03349
: vs.	:	: AWARD
:	:	
: Herzog Heine Geduld, Inc.	:	
: Wall Street Clearing Corporation	:	
: Timothy Carroll	:	
: Christopher Miller	:	
:	: Respondents	:
:	:	

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 31, 1988 Claimant Anne Novotny alleged Respondents engaged in a pattern of unscrupulous conduct and securities fraud by churning the Claimant's account by engaging in risky and unsuitable transactions in order to generate excessive commissions without regard to the Claimant's investment objectives, goals or instructions. Claimant further maintained Respondents failed to meet their obligations of supervisory duties. Respondent Herzog Heine Geduld, Inc. maintained that pursuant to a Clearing Agreement between Herzog Heine Geduld, Inc. and F.D. Roberts Securities, Inc., Respondent Herzog Heine Geduld, Inc. is only required to execute and process customer trades and had no dealings directly with Claimant as a customer of F.D. Roberts Securities, Inc. and that the obligation to supervise Claimants' account with respect to suitability lies with F.D. Roberts Securities, Inc. In response the Claimant maintained Herzog Heine Geduld Inc., had an obligation to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization which Herzog Heine Geduld, Inc. failed to do. Respondent Herzog Heine Geduld, Inc. further maintained the Clearing Agreement provides for the indemnification of Herzog Heine Geduld, Inc. by the remaining Respondents for any claim against Herzog Heine Geduld, Inc. arising out of or related to any transaction cleared by Herzog Heine Geduld, Inc. for a customer of F.D. Roberts Securities, Inc. Respondent Wall Street Clearing Corporation maintained under the terms of a Fully Disclosed Clearing Agreement between Wall Street Clearing Corporation and F.D. Roberts Securities, Inc. Wall Street Clearing Corporation agreed to serve as clearing broker and in such role it agreed to provide only clerical services and where indicated margin loans for certain accounts and it did not initiate or recommend trades for any customer and cannot be held liable for excessive trades. Respondent Wall Street Clearing Corporation further maintained it had no duty to supervise the activities of F.D. Roberts Securities, Inc. or its registered representatives. In response Claimant maintained she was never a party to the Clearing Agreement and she was never informed Wall Street Clearing Corporation was only to perform clearing activities. Claimant further maintained that since Wall Street Clearing Corporation acted as principal in some of the transactions in question, the combined charge of a mark-up and

commission would be improper and excessive. Respondent Timothy Carroll in his Answer maintained the Claimant never informed him she wished to preserve capital and on the contrary informed him she wished to make profits. Respondent Timothy Carroll further maintained he never exercised a trade without the Claimant's knowledge and permission and all investments he recommended were suitable. Respondent Christopher Miller maintained all trades that were executed were done only after discussions between Respondent Christopher Miller and Claimant and after the Claimant gave her authorization for the trades and with the sole interest of benefitting the Claimant's account. Respondent Christopher Miller further maintained that treble RICO damages, punitive damages and attorneys' fees are not proper claims to be determined in an arbitration proceeding. Respondent Christopher Miller further maintained if Claimant recovers against Respondent Christopher Miller then the other co-Respondents shall become liable to Christopher Miller for any and all sums due and owing by Christopher Miller to Claimant. In response the Respondent Herzog Heine Geduld, Inc. maintained the cross-claim failed to state any factual or legal basis for the cross-claim.

#### RELIEF REQUESTED

Claimant requested damages to be computed as follows: trading losses of \$7,580.43; lost interest of \$1,125.41; treble RICO or punitive damages of \$26,117.52 and attorneys' fees of \$8,705.84 and dismissal of all counter-claims against it. Respondent Herzog Heine Geduld, Inc. requested dismissal of Claimant's claim against it and dismissal of all cross-claims against it and that Respondent Herzog Heine Geduld, Inc. be awarded damages and costs for out of the pocket expenses against Claimant and further that if an award is rendered, it be rendered against the other Respondents and not Herzog Heine Geduld, Inc. Respondent Wall Street Clearing Corporation requested dismissal of all claims against it, and further requested that the damages if any be recoverable against other Respondents only and further requested it be awarded the costs and disbursements of this action including reasonable attorneys' fees and such other and further relief as the Panel may deem just and proper. Respondent Timothy Carroll requested dismissal of claims against him. Respondent Christopher Miller requested dismissal of claim against him or in the alternative judgement against Herzog Heine Geduld, Inc. and Timothy Carroll for all sums due in this action against Respondent Christopher Miller which may be found in favor of Claimant.

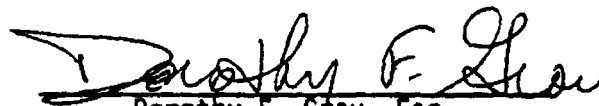
#### AWARD

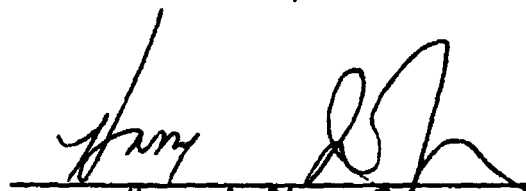
On March 14, 1990 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Anne Novotny on October 28, 1988 and by Respondent Herzog Heine Geduld, Inc. on November 30, 1988 and by Respondent Wall Street Clearing Corporation on February 1, 1989 and by Respondent Timothy Carroll on December 27, 1988 and by Respondent Christopher Miller on December 20, 1988. The hearing was held at the offices of the National

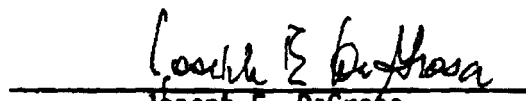
Association of Securities Dealers, Inc. located in New York City, NY and consisted of two (2) hearing sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. In accordance with Section 25 of the Code of Arbitration Procedure, the Respondent Timothy Carroll was served with the Statement of Claim and given an opportunity to respond which he did.
2. In accordance with Section 21 and Section 26 of the Code of Arbitration Procedure, the Respondent Timothy Carroll was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing.
3. In accordance with Section 29 of the Code of Arbitration Procedure, the arbitration panel determined in light of the foregoing information to proceed with the hearing as scheduled.
4. The Respondent Timothy Carroll be and hereby is liable and shall pay to the Claimant Anne Novotny the sum of Six Thousand Nine Hundred Sixty Four Dollars and Sixty Seven Cents (\$6,964.67), inclusive of interest.
5. The Respondent Christopher Miller be and hereby is liable and shall pay to the Claimant Anne Novotny the sum of One Thousand Seven Hundred Forty One Dollars and Seventeen Cents (\$1,741.17), inclusive of interest.
6. The parties shall each bear their respective costs including attorney's fees.
7. Pursuant to Section 43 of the Code of Arbitration Procedures, the National Association of Securities Dealers, Inc. shall retain the \$400.00 filing fee previously deposited by the Claimant. In addition, the Respondents Timothy Carroll and Christopher Miller be and hereby are liable jointly and severally and shall pay to the National Association of Securities Dealers, Inc. the sum of Four Hundred Dollars and No Cents (\$400.00) to represent forum fees.

CONCURRING ARBITRATORS

  
Dorothy F. Gray, Esq.

  
Harry J. Diven, Jr.

  
Joseph E. DaGrosa

DATED: April 26, 1990

STATE OF *New York*  
COUNTY OF *New York*

S.S.:

On this *17<sup>th</sup>* day of *April*, 1990, before me personally appeared Dorothy F. Gray to me known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same

*Jill A. Wile*

JILL A. WILE  
NOTARY PUBLIC, State of New York  
No. 4878015  
Qualified in Nassau County  
Commission Expires Dec. 15, 1990

STATE OF *New York*  
COUNTY OF *New York*

On this *24* day of *April*, 1990, before me personally appeared Harry J. Diven Jr to me known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same

*Edward S. Malkassian*

EDWARD S. MALKASSIAN  
Notary Public, State of New York  
No. 31-7679800  
Qualified in New York County  
Commission Expires March 30, 1992

STATE OF *New York*  
COUNTY OF *New York*

S.S.:

On this *17<sup>th</sup>* day of *April*, 1990, before me personally appeared Joseph E. DaGrosa to me known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same

*Jill A. Wile*

JILL A. WILE  
NOTARY PUBLIC, State of New York  
No. 4878015  
Qualified in Nassau County  
Commission Expires Dec. 15, 1990