

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between )

Maria I. Aja, et al., Claimants )

vs. )

- Morgan Olmstead Kennedy & Gardner )  
and Tim Harrington )

Respondents )

AWARD  
CASE NO. 89-00040

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on January 9, 1989. Claimants are twenty-six individuals, various pension plans and corporations who alleged that respondents pooled claimants discretionary accounts into a general fund to invest in S & P 100 index options, that respondents misrepresented the suitability and risk of such investments, and failed to disclose that claimants could lose their entire investment and be exposed to unlimited liability.

Respondent Morgan Olmstead Kennedy & Gardner, Inc. denied the allegations and maintained that each claimant received and acknowledged written disclosure advising them of the risks involved in trading S & P index options and that each claimant knowingly elected to invest. In addition, Morgan Olmstead asserted a counterclaim against nine of the claimants and alleged outstanding debit balances due and owing.

Respondent Tim Harrington denied the allegations and asserted the affirmative defenses of estoppel and laches. In addition, Harrington asserted a cross-claim against Morgan Olmstead and alleged that Morgan Olmstead wrongfully suspended his trading authority and seized his accounts in violation of the discretionary agreements entered into between claimants and Harrington, and that the mishandling of claimants' accounts resulted in claimants' being locked into enormous losses.

Claimants denied the allegations contained in the counterclaim and maintained that any debit balance in the account was incurred as a result of the misfeasance, malfeasance, or nonfeasance of Morgan Olmstead or its agent Tim Harrington.

Morgan Olmstead denied the allegation contained in the cross-claim and maintained that it had the legal right to assume control over the accounts and was obligated to liquidate some of the accounts in order to comply with margin requirements.

## DAMAGES AND RELIEF REQUESTED

Claimants requested damages as a result of trading losses as follows:

|                                  |          |
|----------------------------------|----------|
| 1. Maria Aja                     | \$45,487 |
| 2. Stanley Baron                 | 31,708   |
| 3. Gerald Barron                 | 31,609   |
| 4. Norman Berlinger              | 44,609   |
| 5. William De Bernardi           | 44,643   |
| 6. Janice Colvin                 | 30,478   |
| 7. Andrew DeJanasz               | 61,939   |
| 8. Robert Dimond                 | 32,588   |
| 9. Dr. Alex & Mrs. Goetz         | 31,096   |
| 10. Allen Green                  | 75,018   |
| 11. Allan Habelson               | 174,795  |
| 12. Imbernino Pension Plan       | 150,106  |
| 13. Imbernino Def. Ben. Plan     | 106,610  |
| 14. Kaufman Pension Trust        | 42,839   |
| 15. Gary Kledzik                 | 99,112   |
| 16. Sam Klein TTE                | 59,310   |
| 17. Kretschmer/Heinz             | 45,015   |
| 18. Eric Martin                  | 45,555   |
| 19. North Valley Def. Ben. Plan  | 180,077  |
| 20. North Valley Prof. Pen. Plan | 77,910   |
| 21. Ondre/Strickland             | 81,410   |
| 22. Chris Palmer TTE             | 45,751   |
| 23. Sergio Perticucci            | 121,328  |
| 24. Scharff/Lahn                 | 46,186   |
| 25. S&P Telis TEE                | 45,598   |
| 26. Felix Troilo                 | 30,478   |
| 27. Richard Villasenor           | 62,819   |
| 28. Glen Wilson                  | 211,292  |
| 29. Woodman Trust Account        | 91,144   |

In addition, claimants requested punitive damages, treble damages under RICO, damages for the negligent infliction of emotional and physical distress, costs, and reasonable attorneys' fees. Claimants/Counter-respondents requested dismissal of the counterclaims in their entirety.

Respondent Morgan Olmstead Kennedy & Gardner, Inc. requested dismissal of the claim and costs. In addition, Morgan Olmstead requests damages under its counterclaims as follows:

|                                  |             |
|----------------------------------|-------------|
| 1. Stanley Baron, TEE            | \$ 5,388.48 |
| 2. William & Beverly De Bernardi | 8,974.28    |
| 3. Alexander & Rosa Goetz        | 7,372.98    |
| 4. Irving & Mona Kaufman TEES    | 15,831.10   |
| 5. Scharff/Lahn                  | 15,658.07   |
| 6. Eric Martin                   | 11,280.80   |
| 7. Charles Palmer, TEE           | 16,378.82   |

|                     |           |
|---------------------|-----------|
| 8. Felix Trollo     | 5,143.50  |
| 9. Kretschmer/Nolte | 11,704.34 |

In addition, respondent Morgan Olmstead requested interest at the legal rate on the debit balances from April 16, 1987 to the date of the award, and costs. Cross-Respondent Morgan Olmstead requested dismissal of the cross-claim and costs.

Respondent Tim Harrington requested dismissal of the claim and costs. Cross-Claimant Harrington requested unspecified general and punitive damages, interest, attorneys' fees and costs.

#### DAMAGES AND RELIEF AWARDED

The hearing in this matter was conducted on August 1,3,6,8, 10,13,14,16,17,20,21, and 22, 1990 in Los Angeles, California and lasted 23 sessions. The undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants and by Respondents, and having considered the pleadings, the testimony, the evidence presented at the hearing and in post-hearing submissions, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Morgan Olmstead Kennedy & Gardner, Inc. and Tim Harrington are hereby jointly and severally liable for, and shall pay to Claimants damages as follows:

|                               |           |
|-------------------------------|-----------|
| a. Maria I. Aja               | \$40,938. |
| b. Stanley Baron              | 27,304    |
| c. Gerald Barron              | 13,580    |
| d. Norman Berliner            | 55,857    |
| e. Dr. & Mrs. De Bernardi     | 33,482    |
| f. B&J Colvin                 | 26,546    |
| g. Andrew De Janasz           | 46,457    |
| h. Robert Dimond              | 29,329    |
| i. Dr. & Mrs. Goetz           | 15,548    |
| j. Allen Green                | 56,264    |
| k. Allan Habelson             | 131,096   |
| l. Imbernino Pension Plan     | 135,095   |
| m. Imbernino Def Ben Plan     | 95,949    |
| n. Irving Kaufman             | 32,129    |
| o. Gary Kledzik               | 0         |
| p. Sam Klein, TEE             | 53,379    |
| q. Kretschmer/Nolte           | 40,514    |
| r. Eric Martin                | 41,000    |
| s. North Valley Def Ben Plan  | 90,039    |
| t. North Valley Prof Pen Plan | 38,955    |
| u. Ondre/Strickland           | 61,058    |
| v. Chris Palmer, TEE          | 34,313    |
| w. Sergio Peticucci           | 109,195   |

|                         |        |
|-------------------------|--------|
| x. Scharff/Hahn         | 41,567 |
| y. Sam Telis TEE        | 34,199 |
| z. Felix Troilo         | 27,480 |
| aa. Richard Villasenor  | 56,537 |
| bb. Glenn Wilson        | 63,388 |
| cc. Arthur Woodman, TEE | 73,181 |

2. Respondents are further jointly and severally liable for, and shall pay to Claimants interest at ten percent (10%) on the sums above from September 13, 1990 until date award is satisfied in full.

3. All other claims are dismissed.

4. Respondent/Counterclaimant Morgan Olmstead Kennedy & Gardner, Inc. is hereby awarded the following sums on its counterclaims against the counter-respondents as indicated:

|                           |          |
|---------------------------|----------|
| a. Stanley Baron          | \$ 5,338 |
| b. Dr. & Mrs. De Bernardi | 8,974    |
| c. Dr. & Mrs. Goetz       | 7,373    |
| d. Irving Kaufman         | 15,831   |
| e. Kretschmer/Nolte       | 11,704   |
| f. Eric Martin            | 11,281   |
| g. Chris Palmer TEE       | 16,379   |
| h. Scharff/Lahn           | 15,658   |
| i. Felix Trolio           | 15,144   |

5. All other counterclaims are dismissed.

6. All cross-claims asserted by Tim Harrington are dismissed.

7. In accordance with Section 43 of the NASD Code of Arbitration Procedure:

- a. The NASD shall retain the \$1,000 filing fee previously deposited by the Claimants; and
- b. Respondents are jointly and severally assessed the sum of \$20,000 representing forum fees to be paid to the NASD directly.

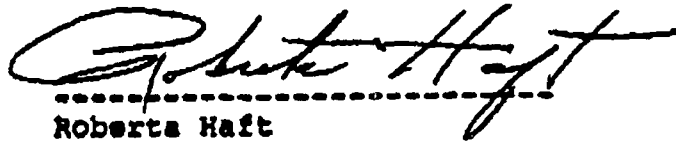
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**OTHER ISSUES**

The parties stipulated to the execution and service of the award in counterpart copies.

**ARBITRATOR**

DATE SERVED: 09/14/90

  
.....  
Roberta Haft

**OTHER ISSUES**

The parties stipulated to the execution and service of the award in counterpart copies.

**ARBITRATORS CONCURRING**

DATE SERVED: 09/14/90

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