

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Jerry James, Trustee Mark  
Ancel Corporation Profit Sharing Plan  
Claimant

AWARD

vs.

NASD =89-01225

Engler-Budd & Company  
Oberweis Securities, Inc.  
Gary Scharif

Respondents

REPRESENTATION

Both Claimant and Respondent Gary Scharif represented themselves.

SUMMARY OF ISSUES

Claimant alleged breach of fiduciary duty, fraud, breach of oral contract, lack of suitability and negligence arising out of trading in OEX options. Claimant further alleged the strategy of hedging all trades was not implemented as he had been told, resulting in losses.

Respondent did not file a Statement of Answer.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages, as amended, of \$57,954.07, plus interest, punitive damages, treble damages under RICO, and costs of arbitration.

Respondent Scharff did not file a Statement of Answer, but appeared at the hearing held on May 29, 1991, to present evidence and testimony.

PROCEDURAL SUMMARY

This claim was filed with the NASD on April 26, 1989. On June 26, 1990, a hearing of 1 session was convened in San Diego, California; when Respondent failed to appear, the hearing was continued. On August 23, 1990, a hearing lasting 1 session was convened in San Diego, California. Respondent failed to appear. On May 29, 1991, a hearing lasting 1 session was convened in San Diego, California. The undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 29, 1989, and by Gary Scharff on May 29, 1991.

### DAMAGES AND RELIEF AWARDED

The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submissions, has determined in full and final resolution of the issues submitted as follows:

1. Respondent Gary Scharff is liable for and shall pay to Claimant the sum of \$14,166.70 exactly.
2. The claims for punitive damages and treble damages under RICO are dismissed.
3. The parties shall each bear their respective costs including attorneys' fees.
4. In accordance with Section 43 of the NASD Code of Arbitration Procedure (Amended June 18, 1990), the NASD shall retain the \$1,000.00 fee previously deposited by the Claimant as an assessment of forum fees.

### OTHER ISSUES

Respondent Engler-Budd & Company no longer exists as a corporate entity, its assets and liabilities having been assumed by Oberweis Securities. Oberweis Securities was ordered into liquidation upon application of the Securities Investor Protection Corporation to the United States District Court, Northern District of Illinois, filed June 18, 1990, and all claims against Oberweis Securities were stayed at that time.

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DATE SERVED: 07/02/91

  
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Kenneth J. Gross

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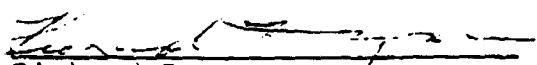
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DATE SERVED: 07/02/91

  
Richard Bryson

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Farrigan S. Weber