

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Reuben Klugman)

) CASE NO. 89-02303

Name of Respondent(s))

PaineWebber, Inc.)

Robert N. Gest)

Heard before the members of the Arbitration Panel:

William A. Fleck, Esq.

Public

Arieh Leo Douer

Public

Terrence W. Grant

Industry

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on August 15, 1989. Claimant alleged that he was a sophisticated investor, knowledgeable in options who managed his own account at Respondent, PaineWebber, Inc. ("PW"); that Respondent, Robert Gest ("Gest"), failed and refused to follow Claimant's instructions to either buy back two of his long positions in the American Stock Exchange Major Market Index, or to close out his remaining short positions; that Gest failed to buy back the long positions after repeated firm instructions to do so; that Gest's failure resulted in a substantial loss to the Claimant; that Respondents' actions constituted fraud; gross negligence; negligence; breach of fiduciary duty; negligent supervision; and, violation of Section 517.301, Florida Statutes.

In a Statement of Answer filed with the NASD on November 3, 1989, Respondents, P.W. and Gest, denied all allegations of wrongdoing and alleged that Gest explicitly followed Claimant's directions; that Claimant gave no order to buy back the long positions; that Claimant directed Gest to exercise time and price discretion to close the short positions; that Gest closed those positions at 04:00 p.m. on April 21, 1989; and, that Claimant's loss was due solely to his own strategy that did not work out.

RELIEF REQUESTED

Claimant requested damages in the amount of \$163,737.50, interest in the amount of \$34,384.87, from April 21, 1989 to date of award, punitive damages in the amount of \$315,000.00, attorney's fees and, costs.

Respondents requested dismissal.

AWARD

On January 28, 1991, in Fort Lauderdale, Florida, during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Klugman, on July 18, 1989, and signed by Respondent, Gest, on September 7, 1989, and by Patricia E. Cowart on behalf of Respondent, P.W., on October 31, 1989.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.
2. Respondents, P.W. and Gest, are found not liable and, therefore, all claims against them are hereby dismissed.
3. Claimant's requests for attorney's fees and punitive damages are denied.

FORUM FEES

1. Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (two sessions x \$750.00). Claimant is hereby assessed \$1,500.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

None.

ARBITRATORS CONCERNING

/S/
William A. Fleck, Esq.

/S/
Arieh Leo Douer

/S/
Terrence W. Grant

Date of Decision: January 30, 1991