

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Catherine Brush)

Case No. 89-02552

Name of Respondent(s))

Southwest Securities, Inc.)

Hampton Securities, Inc.)

Henry M. Bazarte)

Heard before the members of the Arbitration Panel:

Robert Herschmann, Esq.

Public

Harry Polansky

Public

Robert H. Hagan

Industry

REPRESENTATION

Claimant, Catherine Brush ("Brush"), was represented by Henry Sanchez, Jr., Esq. of Page & Bacek.

Respondent, Southwest Securities, Inc. ("Southwest"), was represented by Duncan Boeckman, Esq. of Golden, Potts, Boeckman & Wilson. Respondent, Henry Bazarte ("Bazarte"), was pro-se and Respondent, Hampton Securities Inc. ("Hampton"), failed to appear at the hearing to defend.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on September 13, 1989. Claimant alleged that: Respondents, Bazarte, Southwest and Hampton, were liable for executing unauthorized options trades; unauthorized trading; excessive trading; breach of fiduciary duty; and fraud.

In a Statement of Answer filed with the NASD on January 16, 1990, Respondent, Southwest, alleged that it acted only as the clearing broker for Hampton and is not liable for the selection of the securities nor the determination of the appropriateness thereof. Southwest asserted the affirmative defense of failure to state a claim.

In a Statement of Answer filed with the NASD on January 31, 1990, Respondent, Bazarte, alleged that: Claimant had full knowledge of, and consented to, the trading; Claimant used undue influence when acting with the power of attorney on behalf of Elizabeth Ferro; Brush gave false information

when opening the account and fraudulently used Bazarte to secure for herself a portfolio that was not rightfully hers; Brush was informed about the risks of trading options; Brush was suitable for the transactions; all trades were authorized; and otherwise denied liability.

Respondent, Hampton, failed to file an Answer and did not appear at the hearing to defend.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$88,189.50, inclusive of interest, plus punitive damages in the amount of \$1,000,000.00, plus attorney's fees and other costs.

Respondent, Southwest, requested dismissal of the claim plus attorney's fees. Respondent, Bazarte, requested dismissal of the claim plus costs and Respondent, Hampton, failed to file an answer and did not appear at the hearing to defend.

#### AWARD

On November 27 and 28, 1990, and May 8, 9 and 10, 1991, in Fort Lauderdale, Florida, during a hearing lasting ten (10) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, on October 4, 1989, and signed on December 19, 1989 by J. Ralph Ewing on behalf of Respondent, Southwest, and by Respondent, Bazarte, on January 31, 1990, and not signed by Respondent, Hampton, as required by Sections 12 and 25 of the Code, Respondent, Hampton, being an NASD member firm at the time this controversy arose.

After considering the pleadings, the testimony, and the evidence presented at the hearing, and Respondent, Hampton, neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding its knowledge of these hearings as evidenced in the record of proceedings, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondents, Southwest and Bazarte, 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. Respondent, Southwest, is found not liable and, therefore, all claims against it are hereby dismissed.
3. Respondent, Hampton, is found liable and shall pay to the Claimant the amount of \$32,216.00 inclusive of interest.
4. Respondent, Bazarte, is found liable and shall pay to the Claimant the amount of \$8,054.00 inclusive of interest.
5. Claimant's requests for attorney's fees, costs and punitive damages are denied.

6. Respondents' requests for costs and attorney's fees are denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$10,000.00 (10 sessions x \$1,000.00 per session). Claimant is hereby assessed \$5,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof. Respondent, Hampton, is hereby assessed \$4,000.00 and Respondent, Bazarte, is hereby assessed \$1,000.00 payable to the National Association of Securities Dealers, Inc.

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

1. Jurisdiction exists pursuant to Section 12 of the NASD, Code of Arbitration Procedure.

2. For the reasons set forth in the record of proceedings and contained in Arbitrators' Exhibit #2, this Panel finds service upon and adequate notice to Respondent, Hampton. The NASD has made every attempt to locate and serve, Hampton Securities, Inc. with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

Concurring Arbitrators' Signatures

/s/  
Robert Herschmann, Esq.

/s/  
Harry Polansky

/s/  
Robert H. Hagan

Date of Decision: June 14, 1991