

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

: In the Matter of the Arbitration Between :
: :
: Tuaha Mian :
: Claimant : CASE# 89-02626
: vs. : 89-02627
: :
: Donaldson Lufkin & Jenrette Securities, Inc. :
: Smith Barney Harris Upham & Co., Inc. :
: Sandy Jukel and :
: Alain O'Hayon :
: Respondents :

Heard before:

Arnold Y. Steinberg, Esq.	Public Arbitrator
Harry Polansky	Public Arbitrator
Carl J. Hegner	Industry Arbitrator

CASE SUMMARY

In separate claims filed with the National Association of Securities Dealers, Inc. on September 19, 1989 Claimant Tuaha Mian alleged the Respondents executed unauthorized stock trades in his account, executed transactions to generate commissions only, made misrepresentations to him and were negligent in handling his account. These claims were subsequently consolidated into one matter, heard by the above panel. Claimant further alleged the Respondents engaged in fraudulent behavior, wrongfully liquidated his account against instructions, breached the contractual obligations owed to him and deprived him of the opportunity to profitably participate in the ever changing stock market. Claimant further requested that the Respondents' defenses be barred by the panel. Respondents Donaldson Lufkin & Jenrette Securities, Inc. and Alain O'Hayon denied all wrongdoing concerning the servicing of Claimant's account and denied all wrongdoing concerning the liquidation of any stocks in Claimant's account which were sold for margin call purposes as a result of the cataclysmic market conditions and Claimant was a very sophisticated investor. Respondents Donaldson Lufkin & Jenrette Securities, Inc. and Alain O'Hayon further maintained the Claimant never relied upon any recommendation made by Mr. O'Hayon when purchasing stock for his account and no such recommendations were sought or made and the Claimant's decision to purchase stock was made by himself after he had performed substantial and detailed analysis on each stock. Respondents Donaldson Lufkin & Jenrette Securities, Inc. and Alain O'Hayon further maintained Donaldson Lufkin & Jenrette Securities, Inc. consistently followed its margin policies and every margin call was communicated to the Claimant and maintained that the Claimant's Motion to Bar should be denied. Respondents Smith Barney Harris

Upham & Co., Inc. and Sandy Jukel maintained the Claimant met with Respondent Sandy Jukel and he explained in detail Smith Barney Harris Upham & Co., Inc. policies on margin maintenance and the Claimant was familiar with the risk of margin. Respondents Smith Barney Harris Upham & Co., Inc. and Sandy Jukel further maintained the Claimant was a very sophisticated investor and each of the purchases made by the Claimant were made entirely by his own decisions and his investments were unsolicited. Respondents Smith Barney Harris Upham & Co., Inc. and Sandy Jukel further maintained their actions were consistent with industry practice, regulatory requirements and the contract between the parties and as an accommodation to the Claimant, delayed selling any of his positions upon his request and the losses suffered in his account were caused by market conditions beyond Smith Barney Harris Upham & Co., Inc.'s control. Respondents Smith Barney Harris Upham & Co., Inc. and Sandy Jukel maintained the Claimant's Motion to Bar is without merit and should be denied.

RELIEF REQUESTED

Claimant requested that he be permitted to repurchase the securities that he had liquidated to meet margin calls at the liquidation prices, punitive damages of \$1,700,000.00 and that the arbitrators dismiss the Respondents' defenses. Respondents Donaldson Lufkin & Jenrette Securities, Inc. and Alain O'Hayon requested dismissal of all claims and that costs and reasonable attorneys' fees be assessed against the Claimant. Respondents Smith Barney Harris Upham & Co., Inc. and Sandy Jukel requested dismissal of all claims and that costs be assessed against Claimant.

AWARD

On August 10 and 14, 1990, December 3, 1990 and March 11, 12 and 27, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Tuaha Mian on September 12, 1989 and by Respondent Smith Barney Harris Upham & Co., Inc. on December 4, 1989, by Respondent Sandy Jukel on December 5, 1989, by Respondent Donaldson Lufkin & Jenrette Securities, Inc. on

December 6, 1989 and by Respondent Alain O'Hayon on December 5, 1989. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. located in Fort Lauderdale, Florida and consisted of nine (9) hearing sessions including a pre-hearing conference conducted on August 10, 1990. The Claimant appeared pro se and the Respondents Smith Barney Harris Upham & Co., Inc. and Sandy Jukel were represented by Edward Turan, Esq. and the Respondents Donaldson Lufkin & Jenrette Securities, Inc. and Alain O'Hayon were represented by Brian Amery, Esq. of the law firm of Bressler, Amery & Ross, Esqs. 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. All claims by the Claimant against all Respondents be and hereby are denied in all respects.
2. The Claimant's Motion to Bar be and hereby is denied in all respects.
3. The Respondents' claims for fees and costs against the Claimants be and hereby are denied in all respects.
4. The parties shall each bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$2,000.00 filing fee previously deposited by the Claimant and the Respondents Donaldson Lufkin & Jenrette Securities, Inc., Smith Barney Harris Upham & Co., Inc., Sandy Jukel and Alain O'Hayon be and hereby are liable jointly and shall pay to the Claimant the sum of \$2,000.00 to reimburse him for the filing fee paid. In addition, the Respondents Donaldson Lufkin & Jenrette Securities, Inc., Smith Barney Harris Upham & Co., Inc., Sandy Jukel and Alain O'Hayon be and hereby are liable jointly and severally and shall pay to the National Association of

Securities Dealers, Inc. the sum of \$7,000.00 to represent forum fees.

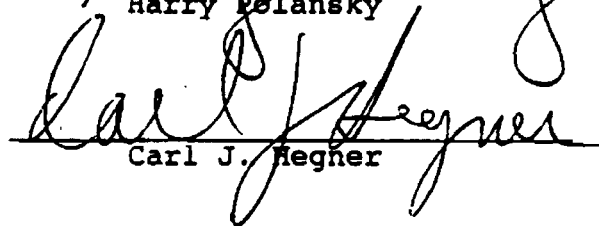
ARBITRATORS SIGNATURES

A large, stylized handwritten signature in dark ink, appearing to be 'Arnold Y. Steinberg'.

Arnold Y. Steinberg, Esq.

A handwritten signature in dark ink, appearing to be 'Harry Polansky'.

Harry Polansky

A handwritten signature in dark ink, appearing to be 'Carl J. Hegner'.

Carl J. Hegner

Date of Decision:

June 11, 1991