

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

August C. & June Simons

90-00928

Name of Respondents

Butcher & Singer, Inc.  
Stuart M. Hammerle  
Howard Butcher III  
Wheat First Securities

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REPRESENTATION

For Claimants: Marc E. Levitt, Esq. of Eugene A. Spector & Associates, P.C.

For all Respondents: Michael N. Onufrak, Esq. of White and Williams.

CASE INFORMATION

Statement of Claim filed: March 30, 1990;  
Submission Agreement dated: March 5, 1990.

Joint Statement of Answer filed by all Respondents: June 19, 1990.  
Submission Agreement dated: Stuart M. Hammerle, June 19, 1991;  
Wheat First Securities, June 19, 1991;

Respondent Howard Butcher III did not sign a submission agreement and  
Respondent Butcher & Singer, Inc. did not submit a properly executed  
submission agreement.

HEARING INFORMATION

Hearing Dates/Sessions: June 20, 1991: 2 sessions;  
June 21, 1991: 1 session.

Hearing Location: Offices of the NASD in Philadelphia, PA.

CASE SUMMARY

Claimants, August and June Simons ("Claimants"), alleged that the Respondents, Butcher & Singer, Inc., Stuart M. Hammerle, Howard Butcher, III, and Wheat First Securities (collectively, "Respondents"), breached their agreement with the Claimants by failing to institute their investment objective in direct contradiction to the managed portfolio agreement which was entered into, and also neglected to protect the assets in their care.

Respondents denied the allegations made against them, and contended that they

never acted as a portfolio manager for the Claimants, nor was a managed portfolio agreement ever entered into. The Respondents contended that Mr. Simons acted as portfolio manager, supervising all trades and investments made by the Respondents, and that ultimate control and discretion was always retained by the Claimants.

#### RELIEF REQUESTED

Claimants requested actual damages of approximately \$100,000.00. The Respondents requested dismissal of all claims made against them.

#### AWARD

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

1. Pursuant to the by-laws of the NASD, the arbitrators determined that Respondents Butcher & Singer, Inc. and Howard Butcher III were required to submit to this arbitration, notwithstanding their failure to submit properly executed submission agreements, and are bound by this Panel's rulings and determinations.
2. At the hearing, the Claimants voluntarily withdrew, with prejudice, all claims against Respondent Howard Butcher, III. This withdrawal had no effect on the final outcome and determination of the Panel.
3. All claims against Respondents Butcher & Singer, Inc., Stuart M. Hammerle and Wheat First Securities be and hereby are dismissed in their entirety.
4. The parties each shall bear their respective costs, including attorneys' fees.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

3 sessions X \$500.00 per session = \$1,500.00 is due.  
(Note: Nonrefundable claim filing fee is \$150.00)

The NASD shall retain the \$750.00 previously deposited by the Claimants, and the Claimants be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$400.00, and the Respondents be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$500.00.

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Concurring Arbitrators' Signatures

  
Cornelius C. Clancy

Dated: 6/28/91

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Concurring Arbitrators' Signatures

  
Charles J. Bloch

Dated: July 9, 1991

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Concurring Arbitrators' Signatures

Robert F. Sanville  
Robert F. Sanville

Dated: 6/28/91

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Concurring Arbitrators' Signatures

/s/  
Charles J. Bloom

/s/  
Robert F. Sanville

/s/  
Cornelius C. Clancy

Dated: July 9 , 1991