

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimant(s)

Marion Tosh

90-01223

Name of Respondent(s)

Mark Dreimer
Michael Freedman

Heard before the Arbitration Panel:

Name	Public/Industry
Allen Kilik, Esq.	Public/Chairman
Vincent L. Leibell, Jr., Esq.	Public/Panelist
Joseph E. DaGrosa	Industry/Panelist

REPRESENTATION

Claimant, Marion Tosh was represented by: Garry E. Feinberg, Esq. of Bower & Gardner.

Respondents, Mark Dreimer and Michael Freedman were represented by Steven G. Eckhaus, Esq. of Eckhaus & Olson.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 30, 1990. Claimant, alleged that Respondents, Michael Freedman and Mark Dreimer in what could be described as a "bait and switch scheme" took her portfolio which consisted of her life savings of \$125,832.45 and put it in a margin account and thereafter commenced highly leveraged trading clearly not in keeping with Claimant's income and investment goals-that of safe and conservative investments.

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Claimant further alleged that at the time she opened her account she was an inexperienced, unsophisticated investor of limited income and was not told that she was agreeing to a margin account and never submitted financial information necessary to open such an account since no such information was requested. Claimant contended that Respondents churned her account and are liable to her under the theories of fraud, negligence, breach of contract and breach of fiduciary duty for the substantial monetary damages she sustained as a result of their actions.

In their Answer Respondents, Michael Freedman and Mark Dreimer, denied responsibility for Claimant's losses and maintained that Claimant's Claims are time barred, and that they are not the rightful respondents in this case. Respondents contended that Claimant was fully aware of the transactions in her account.

RELIEF REQUESTED

Claimant requested recovery for the damages sustained in an amount to be determined by the arbitrators but no less than \$125,832.45 for the loss of her life savings, loss of interest income in the amount of \$120,000.00 recapture of the improper margin interest charges which were totally unsuitable for the account in the amount of \$73,863.29 and commissions and mark ups in the amount of approximately \$100,000.00 along with the costs and disbursements attendant to this proceeding. Claimant also requested punitive damages in the amount of \$1,000,000.00.

Respondents requested dismissal of all Claims.

AWARD

On May 7, 1991 and June 3, 1991 in New York City during a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Marion Tosh, on April 14, 1990, by Respondent, Michael Freedman on January 16, 1991 and by Respondent, Mark Dreimer on April 10, 1991.

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:

(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 original remains on file with the NASD.)

1. The Claims of the Claimant, Marion Tosh against Respondents, Michael Freedman and Mark Dreimer, shall be and are hereby dismissed in all respects;

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2. Claimant's claim for punitive damages is hereby denied;
3. The Parties shall each 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.

Respondents, Michael Freedman and Mark Dreimer are jointly and severally liable to pay forum fees in the amount of \$3,000.00;

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

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/s/

Joseph E. DaGrosa

Dated by the NASD: 6/17/91