

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Arthur S. & Micheline M. Caron JTWROS

90-01747

Name of Respondent(s)

First Swiss International Securities, Inc.  
Robert Thomas Beatty  
Richard L. Cohen  
John S. Anfuso  
John Edward Malesko  
Jack Lubitz  
Eric S. Finkel  
Robert Baran  
Stephen W. Schwartz  
Wedbush Morgan Securities, Inc.

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Heard before:

Michael J. Shalley, Esq.

Public Arbitrator

REPRESENTATION

Claimants were pro se. All Respondents were pro se, except for Wedbush Morgan Securities, Inc. who was represented by Raymond E. Reilly, a senior vice president of Wedbush Morgan, and First Swiss International Securities, Inc. who was represented by John E. Malesko, its president.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on June 16, 1990. Claimants, Arthur S. and Micheline Caron (the "Claimants"), alleged that all the Respondents, Robert T. Beatty ("Beatty"), Richard L. Cohen ("Cohen"), John S. Anfuso ("Anfuso"), John E. Malesko ("Malesko"), Jack Lubitz ("Lubitz"), Eric S. Finkel ("Finkel"), Robert Baran ("Baran"), Stephen W. Schwartz ("Schwartz"), and Wedbush Morgan Securities, Inc. ("Wedbush Morgan"), effectuated, abetted or facilitated in the unauthorized purchases of 5000 shares of Specialized Medical Services, Inc. ("SMS") and 16,000 shares of BioMonitor, Inc. in the Claimants' account while at Respondent First Swiss International Securities, Inc. ("First Swiss").

First Swiss and Malesko denied the allegations made against them, and contended they were not even aware of the complained of transactions at the time of the alleged unauthorized trades. Beatty denied the allegations made against him and contended that he tried to correct the unauthorized purchase

of SMS in the Claimants' account. Lubitz denied the allegations made against him, and contended he did not do any trading for or on behalf of any customer of First Swiss, and he joined First Swiss after the alleged unauthorized purchase of SMS. Finkel and Baran denied the allegations made against them, and contended that the trades in question did not originate from their office, and that they tried to remedy the Claimants' account. Schwartz denied the allegations made against him, and contended that he was never aware of the alleged unauthorized trades and that he never had any dealings with the Claimants. Cohen denied the allegations made against him and contended that the SMS trade was unauthorized but that it should have been corrected by First Swiss immediately. Wedbush denied the allegations made against it, and contended that it is not liable for the Claimants' damages since it was merely the clearing broker for First Swiss and that First Swiss should be held liable for any losses sustained. Wedbush, Finkel and Baran also asserted counterclaims against the Claimants for the costs associated with their defense.

Anfuso did not answer nor appear at the hearing. Cohen did not appear at the hearing, but stated that he wished to stand on his written submission.

**RELIEF REQUESTED**

Claimants requested actual damages of \$11,300.00, plus \$13,700.00 for costs and emotional distress. Respondents First Swiss, Beatty, Cohen, Malesko, Lubitz, Finkel, Baran, Schwartz and Wedbush Morgan requested dismissal of all claims made against them. Wedbush, Finkel and Baran also requested, pursuant to their counterclaims, the costs associated with their defense.

**NASD**

On May 23, 1991, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, Arthur S. and Micheline Caron, on June 14, 1990, by Respondent Beatty on August 8, 1990, by Respondent Cohen on July 19, 1990, by Respondent Lubitz on August 9, 1990, by Respondent Finkel on October 19, 1990, by Respondent Baran on October 23, 1990, by Respondent Schwartz on October 10, 1990, by Respondent Wedbush Morgan on November 9, 1990, and not by Respondents First Swiss, Malesko and Anfuso as is required by Section 12 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure ("Code"). The hearing was conducted at the offices of the NASD in New York City, NY and consisted of two (2) hearing sessions. After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to Section 25 of the Code, Respondent Anfuso was served with a copy of the Claim, and amendments thereto, and afforded an opportunity to answer; Anfuso did not answer.

2. Pursuant to Sections 21 and 26 of the Code, Respondent Anfuso was provided with the time, date and location of the hearing, as well as the name of the arbitrator and hearing procedures; Anfuso did not appear at the hearing nor request an adjournment thereof.
3. Pursuant to Section 29 of the Code and the by-laws of the NASD, the arbitrator determined to proceed with the arbitration of the controversy as if Anfuso had entered an appearance in this matter.
4. In addition, pursuant to the by-laws of the NASD and by their appearance at and participation in the hearing through Malesko (notwithstanding the fact that no answer was filed by either), the arbitrator determined that Respondent First Swiss and Malesko were required to submit to this arbitration, and therefore are bound by this arbitrator's rulings and determinations.
5. All claims against Respondent Robert T. Beatty be and hereby are dismissed in their entirety.
6. All claims against Respondent Richard L. Cohen be and hereby are dismissed in their entirety.
7. All claims against Respondent John S. Anfuso be and hereby are dismissed in their entirety.
8. All claims against Respondent John E. Malesko be and hereby are dismissed in their entirety.
9. All claims against Respondent Jack Lubitz be and hereby are dismissed in their entirety.
10. All claims against Respondent Eric S. Finkel be and hereby are dismissed in their entirety.
11. All claims against Respondent Robert Baran be and hereby are dismissed in their entirety.
12. All claims against Respondent Stephen W. Schwartz be and hereby are dismissed in their entirety.
13. All claims against Respondent Wedbush Morgan Securities, Inc. be and hereby are dismissed in their entirety.
14. All counterclaims against the Claimants Arthur S. and Micheline Caron be and hereby are dismissed in their entirety.
15. The Respondent First Swiss International Securities, Inc. be and hereby is liable and shall pay to the Claimants Arthur S. and Micheline Caron the sum of Two Thousand Four Hundred Eighty Dollars And No Cents (\$2,480.00),

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plus 9% simple interest per annum from July 28, 1989 until the satisfaction of this Award.

16. The parties each shall bear their respective costs.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$400.00 filing fee previously deposited by the Claimants, and Claimants be and hereby are liable and shall pay to the NASD the sum of \$300.00, as costs of the two (2) hearing sessions conducted in this matter.

Concurring Arbitrator Signature

Michael J. Shalley  
Michael J. Shalley, Esq.

Date of Decision: May 23, 1991