

N.A.S.D. AWARD

9505154

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John S. Mooshie and
Jere A. Hughes

Case No. 90-01871

Name of Respondents

Smith Barney Harris Upham & Co., Inc.
and Howard Eisenman

REPRESENTATION

For Claimants, John Mooshie ("Mooshie") and Jere Hughes ("Hughes"): Robert Dyer, Esq. of Allen, Dyer, Doppelt, Franjola & Milbrath, P.A. of Orlando, Florida.

For Respondent, Smith Barney, Harris Upham & Co., Inc. ("SBHU"): Paul K. Barenholtz, Esq. of Smith Barney Inc. New York, New York.

For Respondent, Howard Eisenman ("Eisenman"): Geoffrey B. Schwartz, Esq. of Huey, Guilday & Tucker, P.A., Tallahassee, Florida.

CASE INFORMATION

Statement of Claim filed: July 2, 1990. Claimant's Submission Agreement signed: June 29, 1990.

Respondents', SBHU and Eisenman, Statement of Answer filed: January 20, 1995. Respondents' Submission Agreement signed: January 4, 1995 by Eisenman and by Paul K. Barenholtz, Esq. on behalf of SBHU.

HEARING INFORMATION

On March 1 and 6, 1995, in Fort Lauderdale, Florida, pre-hearing conferences lasting two sessions were conducted via telephone conference call with an arbitrator.

On March 13, 14, 15, and May 8, 9 and 10, 1995, in Tampa, Florida, hearings lasting 11 sessions were conducted.

CASE SUMMARY

Claimant alleged that they met with Eisenman to explain that they wanted to invest \$16,000.00 and that the money was needed in the future to pay off a personal guaranteed agency debt. At Eisenman's recommendation the \$16,000.00 was invested initially in several stocks. Eisenman further recommended that money be borrowed as margin against the stocks and invested in options, particularly OEX index options, representing to Mooshie and Hughes that such a strategy would pose no risk to principal and would potentially yield a substantial return in a relatively short period of time.

At no time did Eisenman inquire into either Mooshie's or Hughe's financial background. Eisenman failed to have either investors sign an options agreement and, contrary to his promise to Mooshie and Hughes, never consulted either Mooshie or Hughes before making transactions in the account.

Despite Eisenman's representations that his constant monitoring of the market would prevent any risk to Mooshie's and Hughes' principal, Eisenman failed to advise his customers that the options strategy he had undertaken was a highly risky, highly speculative strategy which was clearly unsuitable for customers with such limited assets and income. This strategy was also clearly contrary to the customers' stated investment objectives of growth and income, specifically for the purpose of paying off the debt which had built up from their prior business partnership. Eisenman ignored these objectives solely to generate commission income for himself.

As a direct result of Eisenman's conduct, the customers sustained substantial losses to their account between February and August of 1987.

Respondents denied all allegations of wrongdoing and alleged that Mooshie and Hughes, were fully apprised of the risks inherent in the trading in their account. The Claimants took a risk in trading options and, despite an extraordinary and unexpected rise in the stock market, the Mooshie/Hughes account lost an amount well within Claimants' means and risk tolerance.

Eisenman specifically went over the potential risks inherent in the options trading engaged in by the Mooshie/Hughes account with Mr. Mooshie and Ms. Hughes. The options strategy employed was consistent with the actual speculative investment history had by Mr. Mooshie consistently before investing in the specific options as which he now complains and indeed, even after that investment.

RELIEF REQUESTED

Claimants requested compensatory damages of not less than \$16,439, pre-judgment interest on the compensatory damages, trebled damages pursuant to FS 772.11, costs and fees of this action, costs and expenses of expert witnesses, the award of attorney's fees the amount of which shall

9505154

Page 3
NASD Award No. 90-01871

be determined by a court of competent jurisdiction, punitive damages and such other relief as the arbitrators find appropriate under the circumstances.

Respondents requested that the Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may 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.

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:

Respondents, SBHU and Eisenman, are found not liable and, therefore, all claims against them are hereby dismissed.

Claimants' requests for attorney's fees, costs, expenses, cost and expenses for expert witness, punitive damages and treble damages are denied.

OTHER COSTS

Other than as provided below the parties shall each bear all their costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,000.00 (two pre-hearing conferences X \$300.00 plus 11 hearing sessions X \$400.00 per session).

Claimants are hereby assessed \$2,500.00 for which the NASD shall retain the \$300.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$2,200.00.

Respondents, SBHU and Eisenman, are hereby assessed \$2,500.00 jointly and severally payable to the National Association of Securities Dealers, Inc.

Page 4

NASD Award No. 90-01871

The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

/s/
Jerry M. Hamovit, Esq.

Public

/s/
Michael N. Gonatos

Industry

/s/
Vernon E. Allen

Public

Date of Decision: May 18, 1995