

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Michael Stoyka )

Name of Respondent(s) )

Michael Novak )

Russell Herman )

Case No. 90-02054

REPRESENTATION

For Claimant, Michael Stoyka ("Stoyka"): Russell L. Forkey, Esq. of the Law Offices of Russell L. Forkey.

For Respondents, Michael Novak ("Novak") and Russell Herman ("Herman"): Ronald Shindler, Esq. of Fowler, White, Burnett, et al.

CASE INFORMATION

Statement of Claim filed: July 25, 1990.

Claimant's Submission Agreement signed: on July 23, 1990.

Respondents, Novak and Herman's, Statement of Answer filed: on October 22, 1990.

Respondents, Herman and Novak's, Submission Agreements signed: on October 18, 1990.

HEARING INFORMATION

On September 4, 5; October 10, 11 and November 8, 1991, in Fort Lauderdale, Florida, hearings lasting 13 sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for breach of contract; breach of fiduciary duty; negligence; and, as it relates to Respondent, Novak, negligent supervision. Claimant alleged that Herman failed to provide guidance to Claimant to protect him from losses while trading in options.

Respondents denied all allegations of wrongdoing and alleged that: Claimant was informed of the risks involved and assumed such risks; and, Claimant was a knowledgeable and sophisticated investor.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$225,000.00, plus interest, costs and such other relief as the Panel deems appropriate.

Respondents requested dismissal of the claim plus costs and expenses.

#### 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:

1. Respondents, Novak and Herman, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's request for costs is denied.

#### OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$9,750.00 (13 sessions x \$750.00 per session). Claimant is hereby assessed \$9,750.00 for which the NASD shall retain the \$800.00 previously deposited in partial satisfaction thereof.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/  
Steven D. Elias, Esq.

Public

/s/  
Leon J. Steiner

Industry

/s/  
Virginia Rhyne

Public

Date of Decision: December 3, 1991