

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration BetweenName of Claimant

Norman E. Holly

vs.

90-02588

Name of RespondentsJohnston, Lemon & Co., Inc.
Nathan K. Yu

REPRESENTATION

For Claimant: John P. Connolly, Esq.

For Respondents: Johnston, Lemon & Co., Inc. was represented by Kimberley A. Mangum, Esq. and Douglas K. Spaulding, Esq. of the law firm of Reed, Smith, Shaw & McClay.

Nathan K. Yu was represented by Jeffrey W. King, Esq. of the law firm of Collier, Shannon & Scott.

CASE INFORMATION

Statement of Claim filed: September 13, 1990.

Claimant's Submission Agreement signed on: August 20, 1990.

Statement of Answer filed by Respondent, Johnston Lemon & Co., Inc. on: December 18, 1990.

Respondent Johnston Lemon & Co., Inc.'s Submission Agreement signed on: December 17, 1990.

Statement of Answer filed by Respondent Nathan K. Yu on: December 21, 1990.

Respondent Nathan K. Yu's Submission Agreement signed on: March 4, 1991.

HEARING INFORMATION

Hearing Dates and Sessions: July 23, 1991, 2 Sessions
July 24, 1991, 2 Sessions
August 27, 1991, 2 Sessions

Hearing Location: Offices of the National Association of Securities
Dealers, Inc. located in Washington, DC.

CASE SUMMARY

Claimant alleged that the Respondents recommended a variety of clearly unsuitable investments including the trading of securities options knowing them to be unsuitable and contrary to Claimant's stated investment goals; churned the Claimant's account, made misrepresentations of material facts and failed to state material facts to the Claimant; engaged in unauthorized trades in Claimant's account; failed to timely provide the Claimant with his account statements and with an explanation of the activity in his account and breached the fiduciary duty owed to the Claimant. Claimant further alleged he received margin calls in his account notwithstanding the fact that he had never executed a securities margin account agreement with Respondent Johnston, Lemon & Co., Inc.

Respondent Johnston, Lemon & Co., Inc., maintained that if Respondent Nathan K. Yu committed any wrongful acts they were not done within the scope of his employment but rather were contrary to the policies and instructions of Johnston, Lemon & Co., Inc. and Respondent Johnston, Lemon & Co., Inc. further maintained the Claimant was aware that securities were traded on margin for his account. Respondent Johnston, Lemon & Co., Inc. maintained the Claimant was a sophisticated investor and Claimant knew there was an unauthorized trade and by his conduct he ratified the trades; therefore, he approved the transactions in his account.

Respondent Nathan K. Yu maintained the Claimant identified himself as an experienced investor who was seeking to add local investment opportunities to his portfolio of investments and Claimant was aware of the investments made in his account, approved most of the investments made prior to the investment and most investments were made at the request of Claimant. Respondent Nathan K. Yu further maintained on numerous occasions he discussed Claimant's account with him and these discussions included many of the transactions that are claimed to be unauthorized or improper and Claimant specifically authorized and requested that Respondent Nathan K. Yu undertake various discretionary transactions and Claimant never objected to any of these transactions until long after the information concerning them had been provided to Claimant.

RELIEF REQUESTED

Claimant requested compensatory damages of approximately \$35,000.00, punitive damages of \$65,000.00, that interest be assessed from the date of the activity complained of up to the time of payment of the award, costs, fees and attorneys' fees, that opportunity loss of use of investment funds damages be awarded against Respondents and such other and further to which Claimant may be justly entitled as determined by the arbitration panel.

Respondent Johnston, Lemon & Co., Inc. requested dismissal of claim and that it be awarded costs and attorneys' fees against Claimant.

Respondent Nathan K. Yu requested dismissal of claim and that he be awarded recovery of his costs incurred in defending the action and such other and further relief that the panel may deem proper.

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. The Respondents Johnston, Lemon & Co., Inc. and Nathan K. Yu's Motion to Dismiss Claimant's claims in accordance with the Statute of Limitations is denied.
2. Respondents Johnston, Lemon & Co., Inc. and Nathan K. Yu be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$15,000.00, inclusive of interest.
3. Claimant's request for punitive damages is denied.
4. Respondent Johnston, Lemon & Co., Inc.'s. request for a waiver of the postponement fee is denied.
5. The parties shall each bear their respective costs, including attorneys' fees

FORUM FEES

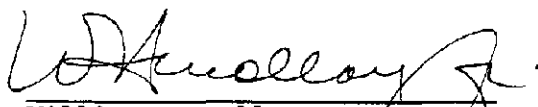
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.


6 sessions X \$500.00 = \$3,000.00, minus hearing session deposit
of \$500.00 = net \$2,500.00 due.


The Respondent Johnston, Lemon & Co., Inc. be and hereby is liable and shall
pay to NASD the sum of \$2,500.00 to represent forum fees. The NASD shall
retain the \$150.00 claim filing fee previously deposited by the Claimant.

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

ARBITRATOR SIGNATURES


William H. Malloy, Jr., Esq.
Public Arbitrator


Henry Jacques Hall
Public Arbitrator


William J. Kerns, Jr.
Industry Arbitrator

DATED BY NASD: September 25, 1991