

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Henry F. Hill )

Name of Respondent(s) )

Pershing Financial Group )

Inga M. Werlitz )

Werlitz Securities, Inc. )

U.S. Clearing Corp. )

Case No. 90-02661

REPRESENTATION

For Claimant, Henry F. Hill ("Hill"): Robert L. Byman, Esq. of Jenner & Block.

For Respondents, Inga M. Werlitz ("Werlitz") and Werlitz Securities, Inc. ("WSI"): Thomas J. McCabe, Esq.

For Respondents, Pershing Financial Group ("Pershing") and U.S. Clearing Corp. ("USOC"): Bennett Falk, Esq. of Morgan, Lewis & Bockius.

CASE INFORMATION

Statement of Claim filed on: September 24, 1990.

Claimant's Submission Agreement signed on: November 26, 1990.

Respondents, USOC and Pershing's, Statement of Answer filed on: April 9, 1991. Respondents' Submission Agreements signed by Thomas A. Franko on April 23, 1991 on behalf of Pershing and by Richard E. Orie on behalf of USOC on April 21, 1991.

Respondents, Werlitz and WSI's, Statement of Answer filed on: April 9, 1991. Respondents' Submission Agreements signed by Werlitz, individually and on behalf of WSI, on March 8, 1991.

HEARING INFORMATION

On December 4, 5 and 6, 1991, in Fort Lauderdale, Florida, hearings lasting (7) seven sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents, Werlitz and WSI, made unauthorized trades in index options by buying 495 more contracts than ordered; failed to provide disclosure documents in violation of CBOE Rule 9.15(a) and Rules of the NASD

and SEC; failed to disclose the risks; were negligent; and, breached their duties to Claimant. Claimant alleged that Respondents, USCC and Pershing, were negligent and violated the Rules of the NASD, CBOE and SEC by accepting and executing the order.

Respondents denied all allegations of wrongdoing and alleged that Hill was a successful, experienced businessman and a wealthy, sophisticated investor; that Hill instructed Werlitz to buy 500 index put options at market on opening on Monday, October 16, 1989, after the 190 point drop of the Dow on Friday, October 13, 1989; that Hill did not state or suggest that he was confused in any way as to whether he was purchasing contracts or shares; and, that Hill was not interested in easing into options as he alleged. Werlitz and WSI alleged they had no further involvement after transmitting the order electronically. USCC and Pershing alleged that they had no duties to Claimant and properly executed the order, as received.

Respondents, Werlitz and WSI, alleged the affirmative defenses of: due care; authorization; compliance with all applicable rules; no duty after transmission of order; proper disclosure of risks; and, no duty to question Claimant's investment decision.

Respondents, USCC and Pershing, alleged the affirmative defenses of: no duty owed; no control; no supervisory responsibility; no violation of rules; laches, waiver, estoppel and ratification; no proximate cause; failure to state a claim; assumption of risk; negligence; failure to mitigate; and, no privity of contract.

#### RELIEF REQUESTED

Claimant requested: damages in the amount of \$1,974,435.00, attorney's fees and costs.

Respondents requested: dismissal, costs and attorney's fees.

#### OTHER ISSUES CONSIDERED & DECIDED

1. The parties have agreed that the Award may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive a conformed copy of the Award while the originals remain on file with the NASD.

2. Respondent, Werlitz, requested leave of the Panel to file a counterclaim at the beginning of the hearing on December 4, 1991. Upon Claimant consenting to such claim, the Panel granted the request. On December 5, 1991, Werlitz withdrew her counterclaim without prejudice due to the fees involved.

3. Respondents, USCC and Pershing's, Motion to Dismiss was considered and granted by the Panel at the hearing, after giving Claimant additional time until Friday, December 6, 1991, to provide the Panel with case law and argument in opposition to that Motion. The claims against USCC and Pershing were, therefore, dismissed with prejudice on December 6, 1991.

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, Werlitz and WSI, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for attorney's fees, costs and punitive damages are denied.
3. Respondents' requests for attorney's fees and costs are denied.

OTHER COSTS

The parties shall each bear all other 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 \$7,000.00 (seven sessions x \$1,000.00). Claimant is hereby assessed \$3,500.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof. Respondents, Werlitz and WSI, are hereby assessed \$3,500.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

Name

/s/  
Robert Harschmann, Esq.

Public

/s/  
Judy Avey

Public

/s/  
Douglas Delaney, Jr.

Industry

Date of Decision: December 19, 1991