

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Chris Mottram)

Case No. 90-03290)

Name of Respondent(s))

Kashner Davidson Securities, Inc.)

REPRESENTATION

For Claimant, Chris Mottram ("Mottram"): A. Grant Bohl of D.B. Management.

For Respondent, Kashner Davidson Securities, Inc. ("Kashner"): William T. Kirtley, Esq. of William T. Kirtley, P.A.

CASE INFORMATION

Statement of Claim filed: on November 20, 1990 and amended on December 17, 1990, February 13, April 8, 1991 and May 6, 1991.

Claimant's Submission Agreement signed: on September 8, 1990.

Respondent's Statement of Answer filed: on February 8, 1991.

Respondent's Submission Agreement signed: on January 28, 1991 by William T. Freyer.

Claimant's Answer to Counterclaim filed: on February 13, 1991.

HEARING INFORMATION

On October 31, 1991, in Tampa, Florida, a hearing lasting one (1) session was conducted.

CASE SUMMARY

Claimant alleged that Respondent was liable for: breach of fiduciary duty; negligence; and, failure to supervise. Claimant alleged that Respondent's clearing broker had a policy of not allowing accounts worth less than \$25,000.00 to trade in uncovered options writing and that Respondent was negligent in not putting in place controls that would have prevented Respondent's employee from entering uncovered options orders.

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Respondent denied all allegations of wrongdoing and alleged the affirmative defenses including that: Claimant was a sophisticated investor and controlled his own account; Respondent acted only as an order taker and followed Claimant's instructions; and, Claimant made the trades knowing he was not approved therefore, with the intent to defraud Respondent.

Respondent filed a counterclaim, and alleged that Claimant was liable for a debit balance in his margin account.

Claimant filed an answer to the Counterclaim and denied liability.

RELIEF REQUESTED

Claimant requested damages in the amount of \$9,560.00 and dismissal of the counterclaim.

Respondents requested dismissal of the claim and counterclaimed for damages in the amount of \$1,787.00 plus attorney's fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

None.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Kashner, is found liable, and shall pay to the Claimant the amount of \$9,560.00.
2. Claimant/Counter Respondent, Mottram, is found not liable and, therefore, all claims against him are hereby dismissed.
3. Respondent/Counter Claimant, Kashner's request for costs and attorney's fees 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 Arbitrator has assessed forum fees in the amount of \$300.00 (one session x \$300.00 per session). Respondent is hereby assessed \$300.00 payable directly to the Claimant. The NASD shall retain the \$300.00 previously deposited by the Claimant in full satisfaction of such fee. Additionally, Respondent is assessed, and shall pay to Claimant, the \$100.00 non-refundable filing fee previously deposited by the Claimant. The NASD shall retain the \$100.00 previously deposited by the Claimant in full satisfaction of such filing fee. Finally, Respondent is assessed the \$500.00 non-refundable filing fee and

the \$300.00 hearing session deposit which should have been paid for Respondent's Counterclaim. The NASD shall retain the \$50.00 previously deposited by Respondent in partial satisfaction thereof.

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

Arbitrator's Signature

Name:

Public/Industry

Richard J. Jones, III, Esq.
Richard J. Jones, III, Esq.

Public

Date of Decision: 11-25-91