

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration BetweenName of Claimant

Shepard & Vrihanac Securities, Inc.

91-00241

Name of Respondent

Donald A. Johnson

Name of Third-Party Respondents

Mesirow Capital, Inc.
Karen K. Amorati

REPRESENTATION

For Claimant Shepard & Vrihanac Securities, Inc. ("Shepard & Vrihanac"): Anthony J. Hartman, Esq. of the law firm of Hermann, Cahn & Schneider.

For Respondent Donald A. Johnson ("Johnson"): Anthony J. DiVenere, Esq. of the law firm of McDonald, Hopkins, Burke & Haber, Co., L.P.A.

For Third Party Respondent Mesirow Capital, Inc. ("Mesirow"): Phillip M. Goldberg, Esq. and Kevin F. Flynn, Esq. of the law firm of Coffield Ungaretti & Harris.

For Third Party Respondent Karen K. Amorati ("Amorati"): Roger W. Van Deusen, Esq. of the law firm of Gaines & Stern, L.P.A.

CASE INFORMATION

Statement of Claim filed: January 23, 1991.

Claimant's Submission Agreement signed on: December 18, 1990.

Johnson's Statement of Answer, Counterclaim Against Shepard & Vrihanac Securities, Inc. and Karen K. Amorati and Third Party Complaint Against Mesirow Capital, Inc. filed: June 3, 1991.

Johnson's Submission Agreement signed on: January 11, 1991.

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Joint Reply of Claimant and Third Party Respondent to Johnson's Counterclaim
filed: June 26, 1991.

Amorati's Submission Agreement signed on: July 29, 1991.

Third Party Respondent Mesirow's Response to Johnson's Third Party Complaint
filed: October 4, 1991.

Mesirow's Submission Agreement signed on: October 2, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: April 21, 1992 - two sessions
April 22, 1992 - two sessions
April 23, 1992 - two sessions

Hearing Location: NASD Office, Cleveland, Ohio

CASE SUMMARY

Claimant alleged that on or about September 15, 1988, Johnson executed a Customer Agreement for a Margin Account with Mesirow, Claimant's clearing agent, which provides that Johnson is to pay on demand any debit balance with respect to any of his accounts. Claimant alleged that as a result of the clearing agency relationship between Claimant and Mesirow, Claimant is expressly authorized to proceed against any customer on Mesirow's behalf in the event of a customer being liable for a debit balance. Claimant alleged that Johnson currently owes \$48,062.99 on his account with Claimant and that this amount represents Johnson's debit balance account as well as interest charged thereon from the date of demand at the rate provided for in the customer agreement. Claimant alleged that despite repeated demands by Claimant, Johnson has refused to pay the sums owed.

Johnson maintained that he is an unsophisticated investor with limited financial background. That Claimant, Amorati and Mesirow failed to keep him apprised of the status of his account and that it was allegedly due to a grave oversight on the part of Claimant and Mesirow that Johnson's account reached a point where it exceeded the required margin debt. Johnson maintained throughout the history of his account he was never informed that any trade would require any additional capital. Johnson maintained that he never authorized the liquidation of his account and that he requested that Claimant reconstruct the account. Johnson maintained that it was the negligent monitoring of his account by Claimant, Amorati and Mesirow that caused the losses sustained in Johnson's account.

Johnson counterclaimed against Claimant and asserted a third party claims

against Mesirow and Amorati alleging that they failed to properly explain the risks associated with his employing a spread options strategy. Johnson alleged that he did not understand the spread option strategy recommended by Amorati, nor was he financially able to bear the risks of such program. Johnson alleged that Amorati failed to comply with the rules of the NASD and NYSE which prohibit broker/dealers from recommending transactions that are unsuitable for their client. Johnson alleged that Claimant and Amorati failed to disclose material information regarding the serious risks associated spread options trading. Johnson alleged that Claimant and Amorati intentionally misrepresented to him that the spread option strategy was safe causing him to rely on this representation and suffer damages. Johnson alleged that Claimant and Amorati failed to properly monitor his account and failed to send him notices when the minimum margin requirements were not being met. Johnson alleged that Mesirow breached its duty to Johnson by failing to provide timely margin notices when his account was not in compliance with the margin rules. Johnson alleged that by Mesirow's failure to timely furnish margin notices, he suffered substantial losses.

Claimant and Amorati submitted a reply to Johnson's counterclaim and third party claim which denied all allegations of wrongdoing.

Third Party Respondent Mesirow maintained that all margin notices were sent to Claimant in a timely fashion and that Mesirow forwarded all margin notices to Johnson consistent with its obligations. Mesirow maintained that it complied with the terms of its Clearing Agreement with Claimant and it was in compliance with all rules and regulations related to Johnson's account. Mesirow denied all allegations of wrongdoing asserted by Johnson.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$48,062.99 plus interest pursuant to the terms and at the rate provided in the Customer agreement, plus interest on the award at the legal rate from the date of the award until the date it is paid, Claimant's attorney's fees and the costs of this proceeding.

Johnson requested that Claimant's claim be denied in its entirety and that he be awarded against Johnson and Amorati compensatory damages in the amount of \$80,193.99, interest, punitive damages, attorney's fees and costs of this proceedings.

Johnson requested damages against Mesirow in the amount of any award which may be granted against him in Claimant's favor, together with his out of pocket losses in the amount of \$32,131.00.

Claimant and Amorati requested that all allegations asserted by Johnson against them be dismissed and that the Panel find in favor of the Claimant.

Mesirow requested judgment in its favor and against Johnson and an award for attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

That after the close of Johnson's case, the panel granted Mesirow's Motion dismissing all claims asserted against Mesirow.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Johnson is liable and shall pay to the Claimant the sum of **FIFTY FIVE THOUSAND TWO HUNDRED FORTY EIGHT AND 34/100 DOLLARS** (\$55,248.34) plus **TWO HUNDRED FIFTY THREE AND 00/100 DOLLARS** (\$253.00) which represents interest still accruing on the debit balance at a rate of eight percent (8%) simple interest per annum from March 31, 1992 to April 23, 1992; so that the sum total amount due from Johnson to the Claimant is **FIFTY FIVE THOUSAND FIVE HUNDRED ONE AND 34/100 DOLLARS** (\$55,501.34).
2. All claims asserted against Amorati are denied in their entirety.
3. All other claims, counterclaims and cross claims are denied in their entirety.
4. The parties shall each bear their respective costs, including attorneys' fees.

FORUM FEES

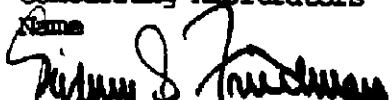
Pursuant to Section 43(c) of the Code of Arbitration Procedure, forum fees for the six hearing sessions conducted in this matter shall be borne equally by Claimant and Johnson. The Claimant's forum fees are \$600 per hearing session so that the cost of three hearings session assessed to the Claimant is \$1800; however, Claimant is entitled to offset this amount with its hearing session deposit of \$600 so that the amount to from the Claimant for its share of the forum fees is \$1200. Johnson's forum fees are \$600 per hearing session multiplied by the three hearing sessions he is being assessed for which equals \$1800, Johnson is entitled to offset this amount with his hearing session deposit of \$400 so that the amount due from Johnson as forum fees is \$1400.

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

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Concurring Arbitrators' Signatures

Name



Sydney S. Friedman, Esq.



Robert C. Devlin - Chairman



Henry Ott-Hansen

Public/Industry

Public Arbitrator

Public Arbitrator

Industry Arbitrator

Date of Decision: June 11, 1992