

NASD

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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 Between

Name of Claimant

Jill Stern Capron

91-00497

Name of Respondent

Prudential Securities Inc
Hampshire Securities Corporation
Stuart, Coleman & Co.
Jose Maiorino
Martin J. Rokeach

REPRESENTATION

For Claimant, Jill Stern Capron: Christopher J. Schulze, Esq.

For Respondent, Hampshire Securities Corporation: John H. Starr of Hampshire Securities Corporation.

For Respondent, Stuart, Coleman & Co.: Stuart J. Voisin of Stuart, Coleman & Co.

For Respondent, Jose Maiorino: Jose Maiorino.

For Respondent, Martin Rokeach: Martin Rokeach.

CASE INFORMATION

Statement of Claim filed: February 14, 1992.

Claimant's Submission Agreement signed on: February 4, 1991.

Statement of Answer filed by Respondents, Hampshire Securities Corporation ("Hampshire") and Martin Rokeach ("Rokeach") on: May 29, 1991.

Respondent, Hampshire Securities Corporation's, Submission Agreement signed on: June 4, 1991.

Respondent, Martin Rokeach's, Submission Agreement signed on May 26, 1991.

Statement of Answer filed by Respondent, Stuart, Coleman & Co. ("Stuart") on: April 25, 1991.

Respondent, Stuart, Coleman & Co.'s, Submission Agreement signed on April 26, 1991

Statement of Answer filed by Respondent, Jose Maiorino ("Maiorino") on May 7, 1991.

Respondent, Maiorino, did not file a Submission Agreement.

Respondents Hampshire Securities Corporation and Martin Rokeach's Motion to Sever and Dismiss.

Respondent, Stuart, Coleman & Co.'s Response to Motion to Sever and Dismiss dated June 14, 1991.

Respondent, Stuart, Coleman & Co.'s Motion to Sever and Dismiss.

Respondent, Prudential Securities, Inc., settled this matter with the Claimant.

HEARING INFORMATION

Hearing Dates/Sessions: August 27, 1991 - 2 Sessions.
August 28, 1992 - 2 Sessions.
October 22, 1991 - 2 Sessions.
May 5, 1992 - 2 Sessions.
June 5, 1992 - 1 Session.
June 30, 1992 - 1 Session.

Hearing Location: NASD Offices, New York, NY.

CASE SUMMARY

Claimant alleged that Respondents, Maiorino, Rokeach, Stuart and Hampshire defrauded her by making untrue statements of facts and by engaging in acts and practices that operated as frauds and deceptions in the purchases and sales of securities in her accounts at Stuart and Hampshire. Claimant alleged that Respondents were aware of her lack of sophistication as an investor and that her sole investment objective was to safely generate income for her support and maintenance.

Claimant alleged that Respondents Maiorino and Rokeach purchased unsuitable and low grade securities and options that were risky and that violated the Claimant's stated investment objectives. Claimant alleged that Maiorino and Rokeach's trading practices were willful, reckless, excessive, unauthorized and generally fraudulent.

Claimant alleged that as a result of churning and fraudulent mismanagement of the account, a net loss of \$105,955 occurred. Claimant alleged that Stuart and Hampshire failed to properly supervise her account and knowingly induced, approved and accepted the benefits of the unauthorized trading.

Claimant alleged that the acts of the Respondents constituted a breach of fiduciary duty owed to her. Claimant alleged that the securities bought and sold for her account were unsuitable for her stated investment objectives and that the Respondents failed to disclose the risks of these transactions.

Respondents, Rokeach and Hampshire, maintained that when Claimant's account was transferred to Hampshire, it already consisted of high yield bond funds, common stocks with call options and junk bonds. Rokeach and Hampshire maintained that they advised the Claimant that the securities she held were unsuitable for someone in her financial condition. The Claimant acknowledged their poor quality, but stated that she needed to continue holding them to maintain her standard of living. Hampshire and Rokeach maintained that when Respondent, Maiorino, went to work for Hampshire, he provided them with an options agreement signed by the Claimant wherein she acknowledged that she understood the risks involved and that it was her desire to engage in covered call writing. Rokeach and Hampshire maintained that Claimant liquidated her account prematurely, and that this, primarily, caused her to suffer losses. Rokeach and Hampshire maintained that they provided good advice to the Claimant, given her financial condition, and stated investment objectives.

Respondent, Stuart, Coleman & Co., maintained that all the transactions in the Claimant's account during the short time it was maintained with the company were suitable and appropriate for her. Stuart maintained that the Claimant was and still is a shrewd and experienced investor.

Respondent, Maiorino, maintained that in response to the Claimant's dissatisfaction with her cash flow, he discussed the strategy of covered call writing with her. Maiorino maintained that after discussing the strategy with her brother, the Claimant decided to proceed with the program. Maiorino maintained that the covered call program was entirely suitable for a conservative account and that it yields better returns than simply buying stock.

RELIEF REQUESTED

Claimant requested damages in the amount of \$105,955, margin interest in the amount of \$137, punitive damages in the amount of \$500,000, costs and disbursements including attorney's fees.

Respondents, Rokeach and Maiorino, requested that the claims be dismissed in their entirety and that they be awarded the costs of this action.

Respondent, Stuart, James & Co., requested that the claims be dismissed in their entirety.

Respondent, Maiorino, requested that the claims be dismissed in their entirety.

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.

Pursuant to the by-laws of the NASD, the arbitrators determined that Jose Maiorino was required to submit to this arbitration, notwithstanding his failure to submit an executed Submission Agreement. Therefore, Jose Maiorino is bound by this panel's rulings and determinations.

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. Claimant's claims against Respondents, Stuart, Coleman & Co., Hampshire Securities Corporation, Jose Maiorino and Martin Rokeach are hereby denied in their entirety.
2. The counterclaims by Hampshire, Rokeach and Stuart, Coleman against the Claimant are hereby denied in their entirety.
3. The request for punitive damages is denied.
4. All parties shall bear their respective costs of this action, including attorney's fees.
5. All other claims and counterclaims, if any, are hereby denied in their entirety.

FORUM FEES

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

1. The Claimant's previously paid filing fee of \$250 and her previously paid hearing session deposit of \$1,000 are to be retained by the NASD.
2. The Respondents are hereby jointly and severally liable for the balance of the forum fees in the amount of \$9,000 (NINE THOUSAND DOLLARS AND 00/100) (10 sessions X \$1,000 = \$10,000 minus hearing session deposit of \$1,000 = net \$9,000 due), and shall pay this amount to the NASD.

Concurring Arbitrator's Signature

Public Chairperson

Michael J. Shalley
Michael J. Shalley, Esq.

Executed on
Date of Decision July 17, 1992

Date of Decision: August 3, 1992