

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John & Judy Mae Nate

91-00947

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Dennis Gabel, Esq.
Jack Brusewitz

REPRESENTATION

For Claimants John & Judy Mae Nate ("Claimants"): John F. Magyar of Magyar & Swisher.

For Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Dennis Gabel ("Gabel"): Francis C. Musselman of MLPFS.

For Respondent Jack Brusewitz ("Brusewitz"): Matthew W. Schlegel of Tucker & Rolf.

CASE INFORMATION

Statement of Claim filed: there was no date on the Statement of Claim; however, it was received by the NASD on March 25, 1991.
Amended Statement of Claim filed: May 28, 1991.
Second Amended Statement of Claim filed: October 9, 1991.
Claimant's Submission Agreement signed on: March 19, 1991.

Statement of Answer filed by Respondent MLPFS on: there was no date on the Statement of Answer; however, it was received by the NASD on May 15, 1991.

Joint Amended Statement of Answer and Cross-claim filed by Respondents MLPFS and Gabel on: there was no date on the Joint Amended Statement of Answer; however, it was received by the NASD on July 22, 1991.

Second Joint Amended Statement of Answer filed by Respondents MLPFS and Gabel on: there was no date on the Second Joint Amended Statement of Answer; however, it was received by the NASD on October 25, 1991.

Respondent MLPFS's Submission Agreement signed on: May 14, 1991.
Respondent Gabel's Submission Agreement signed on: July 18, 1991.

AWARD
#91-00947

Statement of Answer to Crossclaim filed by Respondent Brusewitz on: there was no date on the Statement of Answer to Crossclaim, nor was there a received dated stamped by the NASD.
Statement of Answer to Second Amended Complain filed by Respondent Brusewitz on: October 16, 1991.
Respondent Brusewitz's Submission Agreement signed on: December 5, 1991. Pursuant to Section 12 of the Code of Arbitration Procedure, Brusewitz's submission agreement was not dated or notarized.

HEARING INFORMATION

Hearing Dates/Sessions: December 5, 1991/2 sessions
December 6, 1991/2 sessions

Hearing Location: Southfield, MI.

CASE SUMMARY

Claimants alleged Brusewitz traded options without authorization; forged customer signatures; failed to adhere to trading limits specified; and churned the account. Claimants alleged MLPFS and Gabel did not train or supervise Brusewitz properly and that all Respondents acted fraudulently towards Claimants.

Respondents MLPFS and Gabel alleged that if the signatures on the options forms were not the Claimants' then they were put there with Claimants' consent; no trades were done without Claimants' placing an order; and Brusewitz was properly supervised and trained. Respondents MLPFS and Gabel also entered a Cross-claimed against Brusewitz alleging if either is found liable then such liability arises as the result of Brusewitz's acting outside the scope of his employment; or in violation of the Policies and Procedures of MLPFS; or in violation of the Rules and Regulations of the NYSE, NASD or Exchange Act of 1934.

Respondent Brusewitz denied he acted outside the scope of his employment; in violation of the Policies and Procedures of MLPFS; in violation of the Rules and Regulations of the NYSE, NASD or Exchange Act of 1934. He further admitted he initially signed Claimants' names to the options forms with Claimants' verbal authorization. He denied he made unauthorized trades. He admitted that his supervisor at MLPFS must have been conscious of some of his activities in handling Claimants' account. He denied that his actions were fraudulent.

RELIEF REQUESTED

Claimants requested: actual damages of \$496,180.54, inclusive of

AWARD
#91-00947

excess commissions charged; interest in the amount of \$59,255.68 at six (6%) percent; margin interest in the amount of \$61,000.00; and attorneys' fees.

Respondents MLPFS and Gabel requested: the claim be dismissed in its entirety; if either MLPFS or Gabel is found to be liable that such liability as the result of Brusewitz's actions and should be had against him; and costs.

Respondent Brusewitz requested: the Cross-claim be denied in full and that Claimants' claim be denied in full.

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.

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- Pursuant to the by-laws of the NASD, the arbitration panel determined that Respondent Brusewitz was required to submit to this arbitration and, therefore, is bound by this panel's rulings and determinations;
- 2- Respondent Brusewitz is liable and shall pay to Claimants the sum of TWENTY SEVEN THOUSAND 00/100 DOLLARS (\$27,000.00);
- 3- Respondent MLPFS is liable and shall pay to Claimants the sum of SIX THOUSAND 00/100 DOLLARS (\$6,000.00);
- 4- Claimants' claims against Respondent Gabel are dismissed;
- 5- Respondents' MLPFS and Gabel's Cross-claim against Brusewitz is dismissed;
- 6- All other claims are dismissed;
- 7- The parties shall each bear their own costs, including attorneys' fees.

AWARD
#91-00947

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable filing fee previously deposited by Claimants and the following Forum Fees are assessed.

4 sessions X \$750.00 = \$3,000.00.

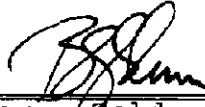
Forum fees Assessed Against:

1- Respondent MLPFS in the amount of \$750.00; however, in lieu of payment to the NASD in the amount of \$750.00, Respondent MLPFS shall reimburse Claimants the amount of \$750.00 to represent their hearing session deposit which shall be retained by the NASD;

2- Respondent Brusewitz in the amount of \$2,250.00.

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

CONCURRING ARBITRATORS



Barry Goldman/Public Arbitrator

Date of Decision: January 10, 1992

AWARD
#91-00947

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CONCURRING ARBITRATORS

Harold D. Gach *Executed*
12/21/91
Harold Gach/Industry Arbitrator

Date of Decision: January 10, 1992

AWARD

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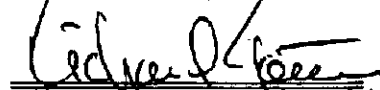
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CONCURRING ARBITRATORS



Richard Potter/Public Arbitrator

Date of Decision: January 10, 1992