

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Frederick Brignull

91-01526

Name of Respondent(s)

Shearson Lehman Brothers, Inc.
Carey Brandfield

REPRESENTATION

For Claimant, Frederick Brignull ("Claimant"), James B. Tuttle, Esq., from the law firm of Breyer Boyajian & Tuttle.

For Respondents, Shearson Lehman Hutton ("SLH") and Carey Brandfield ("Brandfield"), Keith J. Kasper, Esq. from the law firm McNamara, Fitzpatrick, et al.

CASE INFORMATION

Statement of Claim filed on May 14, 1991.

Claimant's Submission Agreement was signed on May 10, 1991.

Statement of Answer was filed by SLH on August 6, 1991.

SLH's Submission Agreement was signed on June 29, 1992

Brandfield's Submission Agreement was signed on July 23, 1992.

Amended Statement of Answer was filed on August 26, 1991.

HEARING INFORMATION

Hearing Date/Sessions: April 20, 1993 - Two Sessions.

Hearing Location: Desmond Americana, 660 Albany-Shaker Road, Albany New York.

CASE SUMMARY

Claimant alleges that after opening an account with Brandfield who was employed by SLH, Brandfield began making unauthorized and unsuitable investments, including trading on margin. Claimant also alleges that in January, 1991, he directed Brandfield to sell all stocks other than Wendy's and Figgie's, then to sell Wendy's and/or Figgie's Stock to the extent necessary to pay off any remaining margin debt and to transfer the net value of the account, \$124,637.27, to his new broker at Quick and Reilly. Claimant further alleges that Brandfield instead kept all of the stocks, American Exploration Company, Freeport McMoran Limited Partnership and Pride Company Limited Partnership. Claimant also alleges that Brandfield then used the proceeds from the sale and purchased additional stocks without his authorization.

Respondents deny the allegations of unauthorized and unsuitable trades and assert eleven affirmative defenses. Respondents maintain that the investments made on Claimant's behalf resulted in a net gain for Claimant. Respondents also maintain that Claimant's allegation that he directed Brandfield to sell his other stocks first before selling Wendy's and Figgie's is not consistent because Claimant did not repurchase Wendy's and Figgie and sell the stocks which were not sold. Respondents also contends that Claimant failed to mitigate his damages and his request for punitive damages is unfounded based upon Fahnestock & Co., Inc. v. Waltman.

RELIEF REQUESTED

Claimant requests an award of \$38,107.37, total out-of-pocket damages as a result of the wrongful sale of Wendy's and Figgies Stocks, reasonable attorney's fees and all filing fees incurred in connection with this arbitration in addition to his-out-pocket damages. Claimant also requests an award of punitive damages.

Respondents request that the claim be dismissed and that an award for costs of defending this claim and attorney's fees be awarded to Respondents.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

After Claimant rested, Respondents moved to dismiss the claim and Claimant opposed this motion. This panel denied this motion.

AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing and post hearing submissions made by the parties in lieu of closing arguments, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable to Claimant and shall pay Claimant **TWENTY THOUSAND DOLLARS AND ZERO CENTS (\$20,000.00)** which includes interest.
2. Respondents shall reimburse Claimant forum fees paid as stated in paragraph two of the Forum Fees section of this decision.
3. All other claim for relief is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed equally against the Claimant and Respondents.

Non-refundable Filing Fee: \$120.00.

Hearing Session Fees: \$400.00 X 2 sessions = \$800.00

1. Claimant deposited \$520.00 and is entitled to a refund in the amount of \$60.00.
2. Respondents shall satisfy the forum fees assessed by reimbursing Claimant \$60.00 and by remitting the \$400.00 to the NASD.

ARBITRATION PANEL

Andrew N. Carnell, Esq.	-	Public Chairperson
Josef E. Windbiel	-	Industry Panelist
James J. Brearton, Esq.	-	Public Panelist

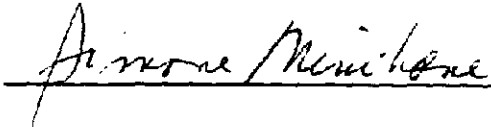
Concurring Arbitrator's Signature
Name


James J. Brearton, Esq.

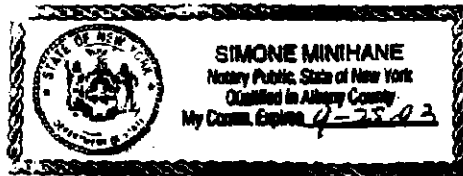
Date of Decision: June 23, 1993

STATE OF *new York*
COUNTY OF *Albany*

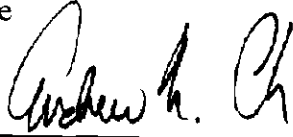
On this *15th* day of June, 1993 before me personally appeared James J. Brearton known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



Simone Minihane



Concurring Arbitrator's Signature
Name

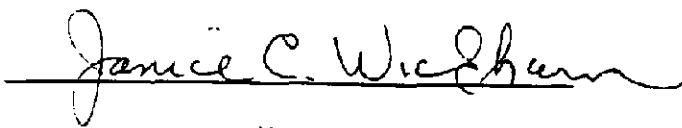


Andrew N. Carnell, Esq.

Date of Decision: June 23, 1993

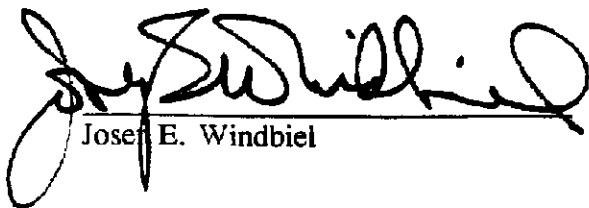
STATE OF New York
COUNTY OF Albany

On this 8 day of June, 1993 before me personally appeared Andrew N. Carnell known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



JANICE C. WICKHAM
Notary Public, State of New York
Qualified in Albany County
Commission Expires 7/1/93

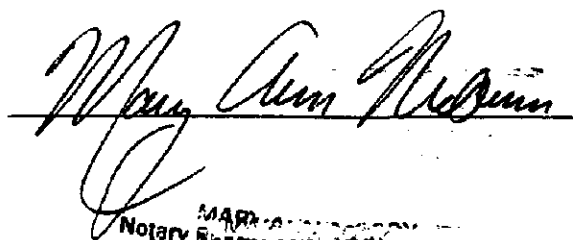
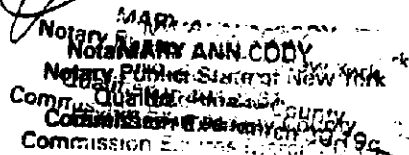
Concurring Arbitrator's Signature
Name


Josef E. Windbiel

Date of Decision: June 23, 1993

STATE OF *NEW YORK*
COUNTY OF *ALBANY*

On this *14th* day of June, 1993 before me personally appeared Josef E. Windbiel known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

MARY ANN CODY *McB. n.w.*
Notary Public, State of New York
No. 4818361
Qualified in Albany County
Commission Expires *March 30 1994*
renewal