

DAT

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Joseph Weinstein

Case No. 91-02502

Name of Respondent(s)

A.G. Edwards & Sons, Inc.
Douglas Breman & Co., Inc.
Jeffrey M. Loper
Michael French

REPRESENTATION

For Claimant Joseph Weinstein ("Weinstein"): Russell L. Forkey, Esq.

For Respondents A.G. Edwards and Sons, Inc. ("A.G. Edwards"), Jeffrey M. Loper ("Loper") and Michael French ("French"): Clay L. Grumke, Esq. of A.G. Edwards. For Loper for transactions at firms other than A.G. Edwards: pro se. For Respondent Douglas Breman and Company, Inc. ("Breman"): Cynthia Barsali of Breman

CASE INFORMATION

Statement of Claim filed: February 20, 1992. Claimants Submission Agreement signed: August 5, 1991.

Statement of Answer filed: October 16, 1991 on behalf of A.G. Edwards, Loper and French. Respondents' Submission Agreements signed: September 15, 1991 by Stephen G. Sneeringer on behalf of A.G. Edwards, September 30, 1991 by Loper, and October 7, 1991 by French.

Respondent Breman did not file an Answer nor execute a Submission Agreement as required by Sections 12 and 25 of the Code (see Other Issues).

HEARING INFORMATION

On June 23 and 24, 1993, in Fort Lauderdale, Florida, Pre-hearing Conferences lasting 2 sessions were conducted via telephone conference call with an arbitrator, but only one will be assessed. On June 28 and 29, 1993, in Fort Lauderdale Florida hearings lasting 4 sessions were conducted.

CASE SUMMARY

Claimant alleged that when he first opened an account with Respondent, Loper, as his investment advisor, he informed Loper that his investment objectives were preservation of capital and income; that when Loper switched firms to Respondent, Breman, Loper persuaded Claimant to start trading in index options and currency futures; that Claimant never signed a margin agreement and that he was unaware that his account was on a margin basis; that he lost \$11,751.60 through option transactions while his account was at Breman; and, that Claimant continued to incur losses from such transactions after Loper and Claimant's account switched to the firm of A.G. Edwards.

Respondents denied all allegations of wrongdoing and alleged that upon opening his account at A.G. Edwards, Claimant was sent a copy of his Options New Account Card for verification of the information contained therein; that Claimant did not dispute any of the information which provided that Claimant is a wealthy sophisticated investor and understood the risks involved in trading options.

Respondents A.G. Edwards, Loper and French alleged the affirmative defenses of failure to object to complained of act within three days under U.C.C. 8-3 19; ratification, estoppel, waiver, and laches; failure to mitigate damages; contributory negligence; assumption of risk; losses were caused by unforeseeable market factors; and failure to state a cause of action.

RELIEF REQUESTED

Claimant requested \$21,959.28 in compensatory damages, interest, costs, \$40,000.00 in punitive damages and attorneys fees.

Respondents requested dismissal and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent Breman failed to file an answer, execute a Submission Agreement or appear to defend this matter at the hearing. However, Mr. Louis Cattaruzza, President of Breman, wrote to all parties on November 25, 1991 to advise no appearance would be made on behalf of Breman and telephoned during the hearing and stated on the record that Cynthia Barsali would not be appearing for Breman

therefore, based on the record evidence, this Panel finds service upon and actual notice to Breman.

2. Pursuant to Section 29 of the Code, this Panel proceeded with the hearing and enters this award as if Breman had appeared and defended this matter.
3. The parties who were present have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, these 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. Respondents, A.G. Edwards and French, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Respondents, Loper and Breman, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$21,945.68, inclusive of interest at the legal rate of 12% per annum pursuant to Section 517.12 and 211, Florida Statutes. All other claims are denied.
3. Claimant's request for attorney's fees, costs and punitive damages are denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure the Panel has assessed forum fees in the amount of \$2,300.00 (1 pre-hearing conference x \$300.00 plus 4 sessions x \$500.00).
2. Claimant is hereby assessed \$500.00 for which the NASD shall retain the \$500.00 previously deposited full satisfaction thereof.
3. Respondents, Loper and Breman are hereby assessed \$1,800.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the \$150.00 filing fee paid by the Claimant.

5. The NASD shall refund the \$1,000.00 postponement fee deposited by A.G. Edwards for its postponement request of the hearings held on June 28 and 29, 1993.

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

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Monica I. Salis, Esq.

Public/Chairperson

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Paul Roquet

Public

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Steven A. Hurts

Industry

Date of Decision: 08/03/93