

N.A.S.D. AWARD

9403143

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

H. William Hofmann

91-03252

Name of Respondents

Shearson Lehman Brothers, Inc.
PaineWebber, Inc.
Henry J. Faragalli, Jr.

REPRESENTATION

Claimant H. William Hofmann ("Claimant") was represented by J. Grant McCabe and Michael Slotznik, Esq. of Rawle & Henderson.

For Respondent PaineWebber, Inc. ("PaineWebber"): John Linsenmeyer, Esq. of the law firm of Morgan, Lewis & Bockius.

For Respondent Shearson Lehman Brothers, Inc. (n/k/a Smith Barney Shearson, Inc.): David Franceski, Esq. of the law firm of Stradley Ronon Stevens & Young.

For Respondent Henry J. Faragalli, Jr. ("Faragalli"): Thomas Loder, Esq. of the law firm of Rubin & Associates.

CASE INFORMATION

Statement of Claim filed on: October 11, 1991.

Supplement to Statement of Claim filed on: March 4, 1992

Claimant's Submission Agreement signed on: October 11, 1991.

Statement of Answer filed by Respondent Shearson Lehman Brothers, Inc. ("Shearson on"): December 9, 1991.

Respondent Shearson's Submission Agreement signed on: October 28, 1991.

Statement of Answer filed by Respondent PaineWebber on: December 26, 1991.

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Respondent PaineWebber's Submission Agreement signed on: December 18, 1991.

Statement of Answer filed by Respondent Faragalli on: December 20, 1991.
Respondent Faragalli did not file a Submission Agreement.

Second Supplement to Statement of Claim was submitted by Claimant during the course of the hearing on March 5, 1993, and Supplemental Answers were submitted by all Respondents.

As a result of federal court litigation involving this case, a Judgment was entered, pursuant to a stipulation of the parties, regarding the interpretation and application of Section 15 of the NASD Code of Procedure.

PaineWebber, Incorporated vs Hofmann, C.A. No. 920CV-0810, April 14, 1993, ED PA. See also, PaineWebber, Incorporated v Hofmann, 984.F2d 1372 (3rd Cir. 1993).

The Judgment defined the arbitrability of claims asserted in the original Statement of Claim.

HEARING INFORMATION

Pre-Hearing Conference: October 5, 1992, one session.
November 6, 1992, one session.

Hearing Dates/Sessions:	August 6, 1992,	Preliminary Hearing, 2 sessions
	August 7, 1992,	2 sessions
	August 11, 1992,	2 sessions
	August 12, 1992,	2 sessions
	September 9, 1992,	2 sessions
	September 10, 1992	2 sessions
	September 11, 1992	2 sessions
	October 9, 1992,	2 sessions
	November 12, 1992,	1 session
	November 20, 1992,	2 sessions
	December 2, 1992,	2 sessions
	January 29, 1993,	2 sessions
	March 5, 1993,	2 sessions
	April 2, 1993,	2 sessions
	May 27, 1993,	2 sessions

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June 17, 1993,	2 sessions
June 18, 1993,	2 sessions
June 30, 1993,	2 sessions
July 1, 1993,	2 sessions
January 26, 1994,	1 session
January 27, 1994,	2 sessions
January 28, 1994,	2 sessions
February 4, 1994,	2 sessions

Hearing Location: Philadelphia, Pennsylvania.

CASE SUMMARY

Claimant alleges, inter alia, that he was an unsophisticated investor who invested most of his life's savings in a single stock-EECO, Inc.-as the result of the persistent and aggressive urging of Respondent broker, Faragalli, Jr. Those savings were lost when EECO went bankrupt. Hofmann claims that he is the victim of Faragalli's gross negligence and fraud as the result of his reliance on the representations of Faragalli ' which resulted in placing Hofmann in a single security which was part of a scheme to manipulate and artificially support the price of EECO. Hofmann alleges that the investment, especially the concentration in EECO was unsuitable, and that the broker's insistence that Hofmann accumulate a large concentration and "hold" the EECO stock was in furtherance of the manipulation scheme participated in by both Faragalli and PaineWebber.

If it is further claimed that PaineWebber, as Faragalli's employer until December, 1987, is liable for failure to supervise the broker and failure to reduce the concentrated position in EECO, and for encouraging the broker's activities and engaging in its own scheme to manipulate the price of EECO stock. It is also alleged that PaineWebber actively concealed its knowledge of Faragalli's wrongdoing, and actively concealed the risks to Hofmann of his EECO holdings. Hofmann alleges violations which include breach of contract, violation of suitability standards, common law fraud, securities fraud, and violation of the Racketeer Influenced and Corrupt Organizations Act.

As a result of the transfer of the account to Shearson, in December, 1987, Hofmann seeks damages from Shearson on the basis of the negligent hiring of Faragalli by Shearson, the failure to adequately supervise Faragalli, and the failure to reduce Hofmann's EECO concentration. Liability is asserted against both Shearson and PaineWebber on the basis of respondeat superior.

The Respondents categorically deny all allegations or wrongdoing and maintain,

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among other defenses, that Hofmann was an experienced investor who was aware of the risks of his investments, that his losses are attributable to natural market forces, that all stock purchased was delivered out and under Hofmann's control, and that all of the broker's activities were knowingly ratified by the investor, that the broker was adequately supervised, and that all compliance requirements were followed.

RELIEF REQUESTED

Claimant requested compensatory damages from the Respondents, including out-of-pocket losses and opportunity losses, in the amount of \$2,075,661.00, attorney's fees, and costs of arbitration. Punitive damages were requested against Respondents PaineWebber and Faragalli.

Respondents requested that the Claimant's claim be denied in its entirety. Respondents sought reimbursement for costs and forum fees. Respondents Faragalli and Shearson also seek reimbursement for counsel fees.

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.

Respondents have filed a series of Motions, including Motions for Summary Judgment and Motions to Dismiss during the course of the hearing. In part, the Motions asserted that Claimant's claims are time-barred pursuant to applicable Federal and Pennsylvania statutes of limitation and the NASD Code of Arbitration Procedure. On September 14, 1993, after due consideration, Respondent PaineWebber's Motion for Summary Judgment and Directed Award was denied, Respondent Faragalli's Motion to Dismiss was denied, and Respondent Shearson's Motion to Dismiss was denied.

Pursuant to Section 12(a) of the NASD Code of Arbitration Procedure and the by-

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laws of the NASD, the Panel exercised its jurisdiction over Respondent Faragalli, notwithstanding his failure to submit an executed Submission Agreement. Therefore, Faragalli is bound by the rulings and the determination of this Panel.

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. That Claimant's claims are denied in their entirety.
2. That the parties shall bear their own costs and expenses, including attorneys' fees; except as specifically stated below.
3. That all other claims, including Claimant's punitive damage claims, are denied in their entirety.

FORUM FEES

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

2 pre hearing conferences x \$300 = \$600

44 hearing sessions x \$1,500 = \$66,000

Total forum fees assessable = \$66,600

The Panel has determined that forum fees shall be equally assessed against the parties so that Claimant is assessed forum fees in the amount of \$16,650. Claimant is entitled to offset this amount with his earlier deposit of \$5400, with his hearing session deposit of \$1500 and with his over payment of \$1300, so that the amount due from the Claimant is \$8,450.

Respondent Shearson is assessed forum fees in the amount of \$16,650. Shearson is entitled to offset this amount with its earlier interim forum fee deposit of \$5400 so that the amount due from Shearson is \$11,250.

Respondent PaineWebber is assessed forum fees in the amount of \$16,650 and is entitled to offset this amount with its interim forum fee payment of \$1500 so that the amount due from PaineWebber is \$15,150.

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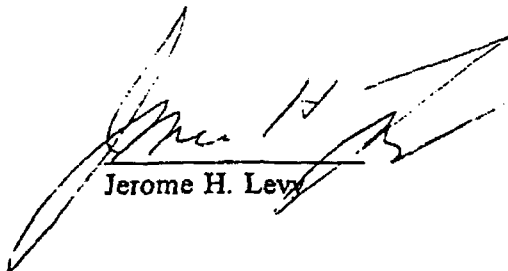
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Respondent Faragalli is assessed forum fees in the amount of \$16,650 with its interim forum fee payment of \$1500 so that the amount due from Faragalli is \$15,150.

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

Concurring Arbitrator's Signature
Name

Public/Industry



Jerome H. Levy

Industry Arbitrator

NASD Date of Decision: March 18, 1994

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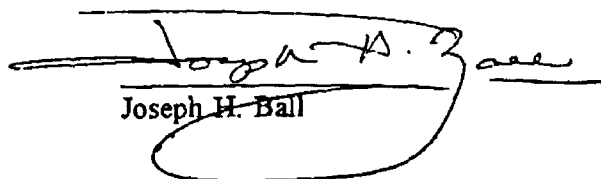
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Respondent Faragalli is assessed forum fees in the amount of \$16,650 with its interim forum fee payment of \$1500 so that the amount due from Faragalli is \$15,150.

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

Concurring Arbitrator's Signature
Name

Public/Industry


Joseph H. Ball

Public Arbitrator

NASD Date of Decision: March 18, 1994

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Respondent Faragalli is assessed forum fees in the amount of \$16,650 with its interim forum fee payment of \$1500 so that the amount due from Faragalli is \$15,150.

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

Concurring Arbitrator's Signature
Name

Public/Industry


Joseph R. Lally, Esq. - Chairperson

Public Arbitrator

NASD Date of Decision: March 18, 1994