

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Lewis Neal Hughes and
Romana Hughes

NASD Arbitration
No. 91-03671

Name of Respondents

Young Stovall and Company
George Moldenhauer: dba Moldenhauer Associates

REPRESENTATION

For Claimant: Evan Schmutz, Esq. - Holme Roberts & Owen - Salt Lake City, Utah

For Respondent: In Pro Se

CASE INFORMATION

Statement of Claim filed: November 21, 1991

Claimants' Joint Submission Agreement signed on: November 16, 1991

Statement of Answer filed by Respondent, Young, Stovall & Co. on: March 5, 1992

Statement of Answer filed by Respondent, George Moldenhauer on: April 30, 1992

Respondent, Young, Stovall & Co.'s Submission Agreement signed on: January 3, 1992

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Dates/Sessions: November 5, 1992 - Two Sessions
November 6, 1992 - Three Sessions

Hearing Location: Salt Lake City, Utah

CASE SUMMARY

Claimants, Lewis Neal Hughes and Romana Hughes (Hughes) alleged that Respondents, George Moldenhauer, was an employee of Respondent, Young, Stovall & Co., Inc. (Stovall). Hughes also alleged that during the course of Moldenhauer's relationship with Hughes and notwithstanding the representations and promises to them, Moldenhauer, without Hughes' knowledge and contrary to their instructions, invested Hughes' funds in the purchase and sale of options on margin, commodities futures, puts and calls, and other highly unsuitable investments, thereby placing Hughes' entire fund at a substantial risk, contrary to their express instructions

and investment objectives and needs. Respondent, Stovall, knew or should have known of these unsuitable investments.

Respondent, Moldenhauer, alleged that Hughes represented that they had experience in trading on margin, and that the funds invested were not necessary for their daily lives, that they requested riskier strategies and in fact followed the same strategy at another brokerage, that they indicated, on a number of occasions, that they understood the risks of their trades and the said trades were suitable.

Respondent, Stovall, alleged that the Claimants were fully aware from the onset of the risks of profits and losses associated with investing in options and stocks, and they voluntarily assumed such risk. The Claimants' knowledge and voluntary assumption of such risk were the sole and proximate cause of their alleged damages. Stovall cited other affirmative defense and alleged that the relationship between Moldenhauer and Hughes was contractual in nature and therefore Stovall had no supervisory responsibility over Moldenhauer.

RELIEF REQUESTED

Claimants requested damages of not less than \$80,000.00, interest, costs, attorneys' fees and treble damages.

Respondents requested dismissal of the claim in its entirety plus costs.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Stovall, as an affirmative defense, alleged that the arbitration panel was without jurisdiction to hear claimants' claims relating to commodities, as such causes of action are within the exclusive jurisdiction of the Commodities Futures Trading Commission and should therefore be bifurcated.

Respondent, Moldenhauer, alleged that there was no agreement or provision to arbitrate this dispute before the National Association of Securities Dealers (NASD), that Moldenhauer & Associates is not a member of the NASD and that George Moldenhauer, acting on behalf of Moldenhauer & Associates would not be an "associated person" for purpose of Section 12(a) of the NASD Code of Arbitration Procedure.

The panel heard the above motions to decline jurisdiction at the opening of the hearing, and the panel took the motion under advisement. At the conclusion of the hearing, prior to closing arguments, after deliberation, the panel denied the motions.

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 original(s) 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:

91-03671

1. Respondent, George Moldenhauer, is solely liable and shall pay to the Claimants, Lewis Neal and Ramona Hughes, the sum of Fifteen Thousand Two Hundred One Dollars and Fifty Seven Cents (\$15,201.57).

2. Respondents, George Moldenhauer and Young Stovall & Company, are jointly and severally liable and shall pay to Claimants, Lewis Neal and Ramona Hughes, the sum of Six Thousand Four Hundred Ninety Seven Dollars and Thirty Eight Cents (\$6,497.38).

3. The parties shall each bear their respective costs and fees including attorneys' fees.

4. Claimants' claim for treble damages is denied.

5. Claimants' claim for prejudgment interest is denied.

FORUM FEES

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

1. Respondents, George Moldenhauer and Young, Stovall & Company, are jointly assessed forum fees in the sum of \$1,875.00, representing an assessment for one-half of the total fees for five hearing sessions at \$750.00 each.

2. Claimants, Lewis Neal and Ramona Hughes, are assessed the sum of \$1,125.00, representing assessment for one half of the hearing sessions (less a credit for the previously deposited \$750.00).

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

ARBITRATORS

Name

Public/Industry
Public Arbitrator
Public Arbitrator
Industry Arbitrator

Served Dec 15, 1992

George John Potter
George John Potter

Date of Decision: 11-09-92

91-03671