

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

In the Matter of the Arbitration Between

Name of Claimant

Simon Naparstek

92-00120

Name of Respondents

Datek Securities Corp.
Packard Group, Inc.
Wellshire Securities Corp.
R.H. Damon & Co., Inc.
Maurice Harroch

REPRESENTATION

For Claimant: Richard M. Resnik, Esq.

For Respondent Datek Securities Corp: Simon S. Kogan, Esq.

For Respondent Maurice Harroch: Ira I. Kerzner, Esq.

For Respondent R. H. Damon & Co., Inc.: Damon D. Testeverde

The Respondents Wellshire Securities, Inc. and Packard Group, Inc. did not attend the hearing.

CASE INFORMATION

Statement of Claim filed: January 13, 1992.

Claimant's Submission Agreement signed on: January 7, 1992.

Statement of Answer filed by Respondent R. H. Damon & Co., Inc. on: April 28, 1992.

Respondent R. H. Damon & Co., Inc.'s Submission Agreement signed on: April 27, 1992.

Statement of Answer filed by Respondent Maurice Harroch on: March 10, 1992.

Respondent Maurice Harroch's Submission Agreement signed on: March 7, 1992.

Respondent Maurice Harroch's Reply to Cross Claim of Respondent Datek Securities Corp. filed: April 30, 1992.

Respondent Datek Securities Corp.'s Submission Agreement signed on: September 22, 1992.

Respondent Datek Securities Corp.'s Statement of Answer and Cross-Claim against Respondent Maurice Harroch filed on: April 1, 1992.

HEARING INFORMATION

Hearing Dates/Sessions:	October	27, 1992, 2 Sessions.
	September	23, 1992, 2 Sessions.
	September	22, 1992, 2 Sessions.

Hearing Location: NASD offices located in New York City, NY.

CASE SUMMARY

Claimant alleged that he sustained substantial actual damages as a result of Respondents' fraudulent and deceitful practices: improper management of his accounts which include but are not limited to the following:

- A. Directing and effecting excessive trades in Naparstek's account, including various "buy-sells" of the same stock on the same day, and churning said account for the primary purpose of producing excessive amounts of commissions;
- B. Making and effecting unauthorized trades in Naparstek's non-discretionary account;
- C. Directing and effecting unsuitable trades in Naparstek's account, including a substantial number of trades in "new issue" stocks, speculative stocks, "penny" stocks and in stocks for which various of the Respondents were "market makers";
- D. Misrepresenting and omitting to state material facts to Naparstek with respect to the aforementioned trades and the status of his account; and
- E. Failing to reasonably supervise or prevent the fraudulent activities which occurred in Naparstek's account.

Claimant alleged these acts constitute, among other things, fraud, violations of federal and state securities laws, breach of fiduciary duty, breach of contract, violations of the rules and regulations of the National Association of Securities Dealers, Inc. ("NASD") and various other

exchanges, including the New York Stock Exchange ("NYSE"). Accordingly, Claimant alleged Respondents are liable to Naparstek for all losses sustained by Naparstek as a result of their misconduct, together with interest thereon, punitive damages, and attorneys' fees.

Respondent R.H. Damon & Co., Inc. maintained while at R.H. Damon & Co., Inc. all of Claimant's trades were authorized; there was no excessive trading or churning in his account; all of the transactions were suitable for the Claimant; Claimant is a wealthy sophisticated businessman who is capable of understanding the risks in his accounts and he received monthly statements which clearly represented the status of accounts on a monthly basis; Respondent R.H. Damon & Co., Inc. denies omitting any material facts regarding his account; Respondent R.H. Damon & Co., Inc. denied any failure to supervise Respondent Maurice Harroch's activities and denied any fraudulent activities occurred.

Respondent Datek Securities Corp. maintained the claim fails to state any cause of action or other grounds to justify an award against Respondents; the statement of claim is pleaded in such a manner as to render specific responses impracticable; the claim is barred by the Statute of Limitations; the claim is barred by the equitable doctrine of Laches; each of the transactions complained of were duly authorized by the Claimant and represent the Claimant's own trading decisions; each of the transactions complained of were duly ratified by the Claimant; in his claim against Datek Securities Corp., Claimant is seeking recovery for losses incurred at other brokerage firms, conduct which Datek could not control and should not be made an insurer; as result of this blunderbuss form of pleading, Datek Securities Corp is forced to expend additional sums in legal fees to defend claims to which it is an improper party; to the extent that Respondent Datek Securities Corp. is forced to expend legal fees to defend such improper claims, Respondent is entitled to recovery for the reasonable sums expended for such defense; the Statement of Claim constitutes a malicious attempt to recover insurance against market loss; to the extent that Maurice Harroch engaged in the acts complained of, he was not acting within the scope of his employment and affirmatively exceeded the control that Datek Securities Corp. has to his dealings with Claimant.

Respondent Datek Securities Corp asserted a cross-claim against Respondent Maurice Harroch alleging in the event that Respondent Datek Securities Corp. is held liable for any losses sustained by Claimant then Datek Securities, Corp. is entitled to indemnification from Respondent Maurice Harroch for any such losses.

In response to the cross-claim Respondent Maurice Harroch maintained it should be denied in all respects and dismissed. In response to the Statement of Claim Respondent Maurice Harroch maintained there is no proof that any loss was induced by or was the responsibility of Respondent Maurice Harroch or any other Respondent; he did not engage in unauthorized trades in Claimant's account anytime or churn Claimant's account; there were no unsuitable trades in Claimant's account; the Claimant authorized the purchase of all stocks in his account at all times; Claimant has not specifically shown that he has sustained any loss in a particular stock;

there were no fraudulent activities in Claimant's account and there were no misrepresentations and/or omissions to state material facts with respect to any trades in the Claimant's account or the status of the account; the acts alleged by Claimant either did not occur or did not constitute a fraud or a violation of federal or state security law, or a breach of any fiduciary duty, breach of contract, violation of "NASD" Rules and Regulations or other exchanges including "NYSE", which is not applicable here in any event. Respondent Maurice Harroch further maintained he has no liability to Claimant in any respect whatsoever and thus there is no interest due and owing to this Claimant and Claimant is not entitled in any respect to an award of punitive damages and attorneys' fees.

RELIEF REQUESTED

Claimant requested:

1. Actual damages of approximately \$94,000.00 comprised of the following:
 - a. decline in the value of Claimant's portfolio by reason of Respondents' engaging in the improper trading practices set forth above.
 - b. all commissions, expenses and interest charges paid to Respondents;
2. Actual damages of approximately \$12,000.00 in margin interest;
3. Punitive damages in the sum of \$600,000 to deter Respondents, and in particular Respondent Maurice Harroch, from engaging in such conduct in the future;
4. All of Claimant's costs, expenses and disbursements, including reasonable attorneys' fees in pursuing this arbitration proceeding; and
5. For such other relief as the arbitration panel deems just and proper.

Respondent Datek Securities Corp. requested the entry of an award dismissing the claims against this Respondent and the entry of an award in an indeterminate sum representing the reasonable attorneys' fees incurred in the defense of this action, on the cross-claim against Maurice Harroch for indemnification for all claims made against Respondent Datek Securities Corp. together with such other and further relief as the arbitrators may deem just and proper.

Respondent Maurice Harroch that the Statement of Claim be denied in all respects; that the cross-claim be denied in all respects and dismissed and that judgement be entered in favor of Respondent Maurice Harroch with costs.

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:

All claims against Respondents Packard Group, Inc. and Wellshire Securities, Inc. are dismissed without prejudice as these Respondents were not able to be properly served.

At the commencement of the first hearing session the arbitration panel was informed that the Claimant had entered into a settlement agreement with Respondent R.H. Damon & Co., Inc.

Claimant Simon Naparstek seeks to recover damages from Respondent Maurice Harroch and Datek Securities, Corp. in the amount of \$106,700.90 of which \$50,833.96 is attributable to the actions of Datek Securities Corp. for trading losses in his securities accounts. During the course of the arbitration, Claimant dropped his claims of churning and unauthorized trading. Claimant's principal claim at this time is that Respondent Maurice Harroch purchased unsuitable securities for his account. Claimant further asserts that Respondents are liable for fraud in allegedly failing to disclose the marketmaker status of Datek Securities and in failing to inform Claimant of the risks of trading on margin.

The arbitration panel has carefully considered the proofs, oral arguments and briefs of the parties and conclude that Claimant has failed to prove his case. The claim of unsuitability is based solely upon the argument that Respondent Harroch purchased low-priced over-the-counter stocks. Out of 63 purchases of securities during a period of approximately two years, eight securities were purchased for under \$1 per share, four were purchased for over \$10 per share and the rest were purchased at prices of between \$1 and \$10 per share. The mere fact that securities are low priced, however, does not, in and of itself, make them unsuitable for investors. Claimant had an income of approximately \$1,000,000 per year. The losses he seeks to recover amount to approximately \$94,000, plus some \$12,000 in margin interest. Claimant offered no proof as to his investment objectives and failed to show that any particular security that was purchased for his account was inconsistent with his investment objectives. Claimant does raise a legitimate question concerning the "in and out" trading that occurred in his accounts. Whereas such trading would be relevant to a claim of churning, that claim is no longer before us. We find no basis in the evidence for concluding that a stock that might otherwise have been "suitable" became unsuitable because of the manner in which it was purchased and sold.

Claimant has also failed to prove a claim of fraud based upon failure to disclose the marketmaker status of the brokerage firm. Claimant testified that he gave carte blanche to his

broker to buy and sell for his account and that he did not even follow what securities were being purchased. He did not testify that he considered the marketmaker status of the brokerage firm to be relevant with respect to this delegation of authority or that it was even of interest to him. In any event, marketmaker status of the brokerage firm was disclosed on some, if not all, transactions, in both the account statements and the confirmation slips.

The claim that there was a fraudulent non-disclosure of the risks of margin trading was also unproven. Claimant testified that he was aware that he had purchased AMR on margin. He never claimed he had any objection to doing so or that he thought the risks of such trading were inordinate.

The claim is dismissed as to both Respondents Maurice Harroch and Datek Securities, Corp.

Each party shall bear their respective costs including attorneys' fees.

FORUM FEES


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

6 sessions x \$1,000.00 = \$6,000.00 less Claimant's hearing
session deposit of \$1,000.00 less Respondent Datek Securities
Corp. hearing session deposit of \$1,000.00 = \$4,000.00 due.

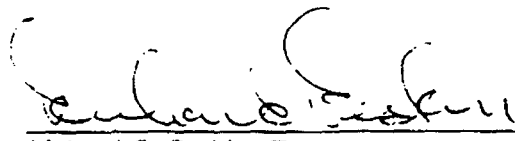
The Claimant be and hereby is liable and shall pay to the NASD the sum of \$1,000.00 to represent forum fees and the Respondent Maurice Harroch be and hereby is liable and shall pay to the NASD the sum of \$2,000.00 to represent forum fees and the Respondent Datek Securities Corp. be and hereby is liable and shall pay to the NASD the sum of \$1,000.00 to represent forum fees.

The NASD shall retain the \$250.00 claim filing fee previously deposited by the Claimant and the \$500.00 claim filing fee previously deposited by the Respondent Datek Securities Corp.


ARBITRATOR SIGNATURES



Roger J. Hawke, Esq.
Public Arbitrator



Richard S. Peskin, Esq.
Industry Arbitrator

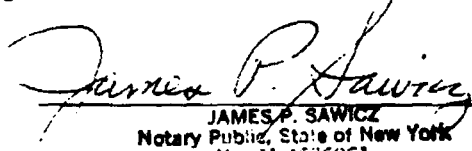


Harry R. Pollack, Esq.
Public Arbitrator

Decision Dated: February 3, 1993

STATE OF: NEW YORK S.S.:
COUNTY OF: NEW YORK


On this 18th day of JANUARY, 1993, before me personally appeared **Roger J. Hawke**, Esq. 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.


JAMES P. SAWICZ
Notary Public, State of New York
No. 31-4536061
Qualified in New York County
Commission Expires Feb. 28, 1993

STATE OF: NEW YORK
COUNTY OF: NEW YORK

S.S.:

On this 26th day of SEPTEMBER, 1993, before me personally appeared **Richard S. Peskin**, Esq. 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.


MARTIN FISHMAN
NOTARY PUBLIC, State of New York
No. 1233960
Qualified in Nassau County
Commission Expires ~~March 28~~ 19 Aug 31 1993

STATE OF: NEW YORK
COUNTY OF: NEW YORK

S.S.:

On this 20th day of JANUARY, 1993, before me personally appeared **Harry R. Pollack**, Esq. known and known to 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.



JOSETTE J. ABELLARD
Notary Public, State of New York
No. 24-4858094
Qualified in Kings County
Commission Expires April 28, 1994