

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Jose Luis Falcon

92-02146

Name of Respondents

Dickinson & Co.
Swartwood Hesse, Inc.
T. Marshall Swartwood

REPRESENTATION

For Claimant Jose Luis Falcon ("Falcon") appeared Philip M. Chiappone, Esq., of the law office of McCanliss & Early located in New York, New York.

For Respondents Dickinson & Co. ("Dickinson"), Swartwood Hesse, Inc. ("Hesse"), and T. Marshall Swartwood ("Swartwood"), collectively "Respondents", appeared Simon Kogan, Esq., a sole practitioner with an office located in New York, New York.

CASE INFORMATION

Falcon's Statement of Claim was filed on June 25, 1992.

Falcon's Amended Statement of Claim was filed on November 15, 1996.

Falcon's Reply to the Amended Statement of Answer was filed on January 6, 1997.

Falcon's Submission Agreement was signed on June 15, 1992.

Respondents' Joint Statement of Answer was filed on December 9, 1992.

Respondents' Joint Statement of Answer to the Amended Statement of Claim and Counterclaim was filed on December 19, 1996.

Dickinson's Submission Agreement was signed on December 11, 1992.

Hesse's Submission Agreement was signed on December 9, 1992.

Swartwood's Submission Agreement was signed on December 11, 1992.

HEARING INFORMATION

Pre-Hearing Conference:

October 18, 1996

One Session

January 29, 1997

One Session - Full Panel

Hearing Dates/Sessions:

July 21, 1997

May 5, 1998

Two Sessions

One Session

The pre-hearing conference on October 18, 1996, and the hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Falcon, a resident of Venezuela, alleged that he maintained a discretionary trading account with Hesse and that Swartwood was the account executive for the account and a principle of Hesse. Falcon maintained that, at the opening of the account, he indicated to Swartwood that the investments in the account were to be safe and conservative in nature, as they would be used to pay for his son's education in the United States. Falcon asserted that Respondents invested his account in securities which were speculative, highly volatile, had a limited market, and in which Respondents were market makers. Falcon further asserted that Swartwood invested in most of these securities which created a conflict of interest, especially with respect to when such securities would or should be sold. Falcon contended that he instructed Swartwood to sell some or all of the securities in his account numerous times, between the summer of 1987 and September 1990, and that Respondents failed to follow his instructions. Falcon alleged that Respondents did not inform him of the nature of the investments. Falcon asserted that Respondents breached their fiduciary duties, breached their contract, engaged in fraud, and were negligent in the handling of his account.

Respondents maintained that no unauthorized trades were made in Falcon's account, all trades were suitable for Falcon, and no material facts were misrepresented or omitted to Falcon. Respondents denied Claimant's accusation that they did not fail to exercise due care or were negligent in the handling of Falcon's account. Respondents denied that a conflict of interest existed between them and Falcon in regards to any securities held in Falcon's account and when that security would or should be sold.

Pursuant to the counterclaim filed by Swartwood, Falcon initiated this arbitration willfully and maliciously, without cause, by making false statements with the intent to injure Respondents and to recover monies to which he is not entitled.

Falcon denied the allegations contained in the Counterclaim.

RELIEF REQUESTED

Falcon requested:

- (a) Compensatory damages in the amount of at least \$70,000.00;
- (b) Punitive damages in the amount of \$100,000.00;
- (c) Interest on the claim from the earliest date at the statutory rate;
- (d) Costs and disbursements of this proceeding, including attorneys' fees; and
- (e) That the Counterclaim be dismissed.

Respondents requested:

- (a) That the Statement of Claim be dismissed;
- (b) On the first counterclaim damages in the amount of \$250,000.00;
- (c) On the second counterclaim damages in the amount of \$100,000.00;
- (d) On the third counterclaim damages in the amount of \$100,000.00;
- (e) Reasonable attorneys' fees;
- (f) Costs and disbursements; and
- (g) Such other and further relief as the arbitrators deem just and proper.

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 original remains 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. Falcon's claims are dismissed in their entirety.
- 2. Respondents' Counterclaims are dismissed in their entirety.
- 3. All requests for punitive damages are hereby denied.
- 4. All requests for attorneys' fees are hereby denied.
- 5. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee and \$750.00 hearing session deposit paid by Falcon and have assessed the following Forum Fees:

1 Pre-hearing conference x \$300.00	=	\$ 300.00
1 Pre-hearing conference (with panel) x \$750.00	=	\$ 750.00
3 Hearing sessions x \$750.00	=	<u>\$2,550.00</u>
Total Forum Fees	=	\$3,300.00

- 1. Respondents are jointly and severally liable for and shall pay the sum of \$3,300.00 representing the total forum fees assessed. Falcon previously deposited \$750.00 with NASD Regulation, Inc., and, therefore, Respondents are jointly and

severally liable for and shall remit the \$2,550.00 remaining balance.


2. Respondents are joint and severally liable and shall pay Falcon \$750.00 as reimbursement of the \$750.00 hearing session deposit.
3. Respondent T. Marshall is liable for and shall pay \$500.00 representing the non-refundable filing fee for the Counterclaim.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL


Harvey Barrison, Esq.	-	Public Chairperson
Barry Feiden	-	Public Arbitrator
John Cleaveland Palmer, CFP, CIMA	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


Harvey Barrison, Esq.
Chairperson - Public Arbitrator

Date of decision: June 17, 1998


I, Harvey Barrison, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Harvey Barrison, Esq.

ARBITRATION PANEL

Harry Barrison, Esq.	-	Public Chairperson
Barry Feiden	-	Public Arbitrator
John Cleaveland Palmer, CFP, CIMA	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Barry Feiden
Public Arbitrator

Date of decision: June 17, 1998

I, **Barry Feiden**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

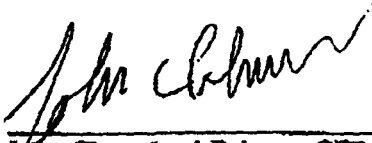


Barry Feiden

ARBITRATION PANEL

Harvey Barrison, Esq.	-	Public Chairperson
Barry Feiden	-	Public Arbitrator
John Cleaveland Palmer, CFP, CIMA	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



John Cleaveland Palmer, CFP, CIMA
Industry Arbitrator

Date of decision: June 17, 1998

I, John Cleaveland Palmer, CFP, CIMA, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



John Cleaveland Palmer, CFP, CIMA