

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Stanley F. and Margaret Jaros

92-02761

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Sam M. Alberico

REPRESENTATION

For Claimants: Roger W. Van Deusen, Esq., of Gaines & Stern Co., L.P.A.

For Respondents Merrill Lynch Pierce Fenner & Smith Inc. ("Merrill") and Sam M. Alberico ("Alberico"): Byron Krantz, Esq., of Kohrman Jackson et al.

CASE INFORMATION

Statement of Claim filed: August 18, 1992.

Amendment to Statement of Claim dated: May 19, 1992.

Claimants' Brief in Opposition to Respondents' Motion of Dismissal dated: October 28, 1993.

Margaret C. Jaros' Durable Power of Attorney dated: September 17, 1992.

Claimants' Submission Agreement signed on: September 17, 1992.

Joint Statement of Answer filed by Respondents on: December 11, 1992.

Joint Motion for Dismissal of Certain Claims by Respondents dated: October 27, 1993.

Respondent Merrill's Submission Agreement signed on: January 29, 1993.

Respondent Alberico's Submission Agreement signed on: October 28, 1993. It was not notarized; however, Respondent Alberico agreed to abide by this panel's rulings and determinations.

AWARD
#92-02761
Page two

HEARING INFORMATION

Hearing Dates/Sessions: October 28, 1993/1 session
 October 29, 1993/2 sessions
 November 8, 1993/2 sessions
 November 9, 1993/2 sessions

Hearing Location: NASD, Cleveland. OH.

CASE SUMMARY

Claimant Stanley F. Jaros ("Jaros") alleged he informed Respondent Alberico that his investment objectives were long-term capital appreciation, conservation of principal and the production of income. Jaros alleged Alberico intentionally and recklessly induced Claimants, by misrepresentations and omissions of material fact, to enter into the sale and purchase of unsuitable, speculative securities (including Keystone and Navistar) and to leverage their investments by the use of a margin account. Jaros further alleged Alberico churned the account. Finally, Jaros alleged that Respondent Merrill failed to maintain and enforce a proper system of internal supervision over Alberico.

Respondents maintained Claimant Jaros expressed interest in trading good quality and speculative stocks to achieve his investment objectives of intermediate and long term price appreciation. Respondents asserted Jaros was at all times in full control of the accounts, approved all trades prior to entry and that he always received confirmations and monthly statements showing all trades, equity balances and margin costs.

Respondents asserted that as with other investors during the crash of 1987, Jaros' previous gains were largely lost and that he did not complain or indicate that the trading was unsuitable. Respondents contended that Jaros continued to actively trade in the account with Alberico and that all transactions recommended by Merrill and Alberico were suitable and approved prior to entry by him. Respondents maintained Claimants' account was not churned and that the activity was consistent with their investment objectives. Respondent Merrill asserted it properly supervised Claimants' account and that Jaros raised no complaints regarding any transactions in the account.

Respondents further contended that certain of Claimants' claims were barred by Section 15 of the NASD Code of Arbitration Procedure ("Code") and the applicable Statute of Limitations and should be dismissed.

AWARD
#92-02761
Page three

Claimant Jaros replied to Respondents' Motion to Dismiss by asserting that Claimants had brought their action within all applicable limitations periods and that the claims were arbitrable pursuant to Section 15 of the Code.

RELIEF REQUESTED

Claimants requested: actual damages in an amount exceeding \$200,000.00, plus interest from the date of judgment at the rate of ten (10%) percent per annum; exemplary and/or punitive damages in the amount of \$500,000.00; attorneys' fees and costs.

Respondents requested: the arbitrators dismiss the claim of Stanely F. Jaros and assess costs against him.

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.

This panel has determined that pursuant to the bylaws of the NASD, Respondent Alberico shall be bound by its rulings and determinations.

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 are hereby liable, jointly and severally, and shall pay to Claimants the sum of \$250,000.00;
2. Claimants' claim for exemplary and/or punitive damages is denied;
3. Respondents' Motion to Dismiss Certain of Claimants' claims is denied;
4. All other claims are denied;
5. Each party shall bear its own expenses, including attorneys' fees. Respondents are hereby liable, jointly and severally, and shall pay to Claimants the sum of \$1,000.00. Said amount to reimburse to Claimants

AWARD
#92-02761
Page four

the \$1,000.00 hearing session deposit previously paid to the NASD.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain Claimants' \$250.00 non-refundable filing fee and the following Forum Fees are assessed.

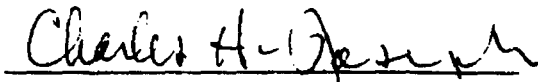
7 sessions X \$1,000.00 = net \$7,000.00 due.

Forum fees Assessed Against:

1. Respondents are hereby liable, jointly and severally, in the amount of \$7,000.00. However, Respondents shall reimburse Claimants as noted above; therefore, the amount due and owing to the NASD equals \$6,000.00.

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

Arbitrator Signature


Charles Joseph/Industry Arbitrator

Executed on
~~12/30/93~~ 12/31/93

Date of Decision: December 30, 1993

AWARD
#92-02761
Page four

the \$1,000.00 hearing session deposit previously paid to the NASD.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain Claimants' \$250.00 non-refundable filing fee and the following Forum Fees are assessed.

7 sessions X \$1,000.00 = net \$7,000.00 due.

Forum fees Assessed Against:

1. Respondents are hereby liable, jointly and severally, in the amount of \$7,000.00. However, Respondents shall reimburse Claimants as noted above; therefore, the amount due and owing to the NASD equals \$6,000.00.

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

Arbitrator Signature



Jeffrey Bain/Public Arbitrator

Date of Decision: December 30, 1993

AWARD
#92-02761
Page four

the \$1,000.00 hearing session deposit previously paid to the NASD.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain Claimants' \$250.00 non-refundable filing fee and the following Forum Fees are assessed.

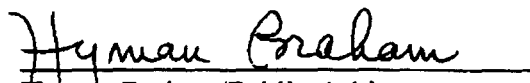
7 sessions X \$1,000.00 = net \$7,000.00 due.

Forum fees Assessed Against:

1. Respondents are hereby liable, jointly and severally, in the amount of \$7,000.00. However, Respondents shall reimburse Claimants as noted above; therefore, the amount due and owing to the NASD equals \$6,000.00.

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

Arbitrator Signature


Hyman Braham/Public Arbitrator

Date of Decision: December 30, 1993