

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Frank Paulussen, TTEE/Cold Storage Co., Inc.
Pension & Profit Sharing Trust, et al.

92-04049

v.

Name of Respondent

Hopper Soliday & Co.

REPRESENTATION

For Claimant: J. Eric Kishbaugh, Esq. of the law firm of J. Eric Kishbaugh

For Respondent: John Spelman, Esq. of Klehr, Harrison, Harvey, Branzburg, et al.

CASE INFORMATION

Statement of Claim filed on January 25, 1993.

Claimant's Submission Agreement signed on January 14, 1993.

Statement of Answer filed by Hopper Soliday & Co. ("Hopper") on April 13, 1993.
Hopper Soliday did not sign a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: January 27, 1994/2 Sessions

Hearing Location: NASD, Inc. in Philadelphia, Pennsylvania

CASE SUMMARY

Claimants alleged that in May of 1989, Respondent approached Claimants to advise of the availability for purchase of certain Meritor Savings Bank Pennsylvania subordinated capital notes ("Notes"). On May 26, 1989, Respondent purchased for Claimants 100,000 of the Notes at 52 points on margin and purchased additional notes at a subsequent date. Claimants alleged that at no time prior to the purchase did Respondent advise Claimants of any policy or house rule regarding the purchase of securities on margin. Claimants alleged that in November of 1990, Respondent notified Claimants that the Notes were not marginable under Respondent's house rule, and that Respondent required such securities be liquidated immediately. Claimants alleged that on December 5, 1990, Claimants were forced to liquidate the Notes, incurring substantial loss since at the time of liquidation the fair market value of the Notes had plummeted to 26.5 points. Claimants alleged that Respondent misrepresented or failed to disclose to Claimants that the Notes were not marginable; on which representation or nondisclosure Claimants reasonably relied at all times, thereby causing Claimants substantial financial loss on the liquidation of the Notes.

Respondent maintained that both Claimants were knowledgeable, sophisticated investors who also understood the operations of margin accounts and entered into an agreement directly with Kemper regarding margin credit and calls. Respondents maintained that on November 30, 1990 Hopper received a margin call on Claimants' accounts from Kemper stating that the Notes were not marginable because, under Kemper's house rules only bonds with an A or AAA rating were marginable at 50 points and above. At the time of Kemper's margin call, the market price for the Notes was 26 1/2. Respondents maintained that Hopper immediately relayed to Claimants the content of Kemper's margin call. Respondents maintained that Hopper was unaware of, had no reason to know of and was not responsible for Kemper's house rules concerning the marginability of the Notes. Respondents maintained that Claimants refused to respond to Kemper's margin call. Accordingly, Kemper sold the Notes at 26 3/4, plus accrued interest on December 5, 1990. Respondents maintained that Claimants have no claim against Hopper for anything arising out of Kemper's margin call. Respondent maintained that the decision to purchase securities on margin with Kemper was Claimants' decision. Respondents maintained that Claimants maintained large margin accounts with Kemper.

RELIEF REQUESTED:

1. Claimants demand judgment in the amount of \$165,000.00;
 2. costs of suit;
 3. attorneys fees;
 4. interest.
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1. Respondents request that the Claimants' claims be dismissed;
 2. that the fees and expenses of this arbitration be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed to receive conformed copies of the award while the original remain on file with the NASD.

AWARD

After considering the pleadings, 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. Hopper Soliday & Co. shall pay to Claimant Andrew F. Paulussen the sum of \$13,000.00, excluding interest.
2. Respondent Hopper Soliday & Co. shall pay to Claimant Frank Paulussen, Trustee for Cold Storage Construction Co., Inc. Pension Trust, the sum of \$19,000.00, excluding interest.
3. Respondent Hopper Soliday & Co. shall pay to Claimant Frank Paulussen, Trustee for Cold Storage Construction Co., Inc. Profit Sharing Trust the sum of

\$19,040.00. excluding interest.

4. Claimants shall pay one-half the forum fees associated with this arbitration.
5. Respondents shall pay one-half of the forum fees associated with this arbitration.

FORUM FEES

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

Non-refundable Filing Fee: \$200.00


Hearing Session Fees: \$750.00 X 2 Sessions = \$1500.00

Total: \$1700.00

1. Claimants shall pay to the NASD the sum of \$850.00 to be off set by the \$950.00 already paid to the NASD in the form of a \$200.00 filing fee and a \$750.00 hearing session deposit. The Claimants shall receive a refund from the Respondent of \$100.00.
2. Respondent shall pay to the NASD the sum of \$850.00. The Respondent shall satisfy payment by reimbursing the Claimants \$100.00 and paying the NASD the balance of \$750.00.

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

Concurring arbitrators



John J. Jordan, Esq.
Chairperson

public arbitrator

Robert D. Herschmann, Esq.

public arbitrator

Allen B. Lang

industry arbitrator

NASD DATE OF DECISION: April 29, 1994

Concurring arbitrators

John J. Jordan, Esq.
Chairperson

public arbitrator

Robert D. Herschmann

Robert D. Herschmann, Esq.

public arbitrator

Allen B. Lang

industry arbitrator

NASD DATE OF DECISION: April 29, 1994

Concurring arbitrators

John J. Jordan, Esq.
Chairperson

public arbitrator

Robert D. Herschmann, Esq.

public arbitrator



Allen B. Lang

industry arbitrator

NASD DATE OF DECISION: April 29, 1994