

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Harry and Pearl Weinberg

92-04203

Name of Respondents

**J.W. Charles Securities Inc.
Richard Dupuis**

REPRESENTATION

For Claimants, Harry and Pearl Weinberg ("Weinbergs"): Gail F. Aird of Securities Arbitration Network Group, Boca Raton, Florida.

For Respondents, J.W. Charles Securities Inc. ("JWC"), and Richard Dupuis ("Dupuis"): Gregory Tendrich, Esq. of J.W. Charles Securities, Inc., Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed: December 15, 1992.

Claimants' Submission Agreement signed: November 3, 1992.

Statement of Joint Answer filed by Respondents, JWC and Dupuis: June 16, 1993.

Respondent, JWC's, Submission Agreement signed: May 21, 1993 by Charles B. Scarlett as General Counsel of JWC.

Respondent, Dupuis', Submission Agreement signed: May 21, 1993.

HEARING INFORMATION

On February 18, 1994, April 4 and 5, 1994, in Fort Lauderdale, Florida,

Hearings lasting six (6) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents did not abide by Claimants' stated investment objectives causing Claimants to sustain substantial losses in their accounts; specifically, Respondents violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5 promulgated thereunder; Florida Statute Section 517.301, The Securities and Investor Protection Act; Florida Statute Section 812.014, Florida RICO Provisions; and engaged in conduct which constituted Churning, Unsuitability, Mutual Fund Switching, Common Law Fraud and a Breach of Fiduciary Duty.

Respondents denied all allegations of wrongdoing and alleged that Claimants directed some of the trading in the account and the volume of trading in the account did not rise to a level to support a churning claim; that no mutual fund switching occurred because the transfer of funds involved the same family of funds and no commissions were generated; that John Smith testified that each and every investment met the Claimants' investment objectives at the time of the investment; and that there is no indication of damages since the Claimants had a net profit in the account.

RELIEF REQUESTED

Claimants requested actual damages of \$75,000.00; compensatory damages of \$20,000.00; treble damages in the amount of \$285,000.00; unspecified punitive damages; interest and attorney's fees and costs.

Respondents requested dismissal of all claims and reimbursement for attorney's fees and costs.

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.

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 found not liable and, therefore, all claims against them are dismissed.

2. Respondents' request for attorney's fees and costs is hereby denied.

OTHER COSTS

Other than forum fees listed below, each party shall bear his own costs involved with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$4,500.00 (6 sessions X \$750.00).

Claimants are hereby assessed \$2,250.00, for which the NASD shall retain the \$1,050.00 previously paid in partial satisfaction thereof, leaving a balance due the National Association of Securities Dealers, Inc., of \$1,200.00.

Respondents are hereby assessed \$2,250.00, jointly and severally, payable directly to the National Association of Securities Dealers, Inc.

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

Concurring Arbitrators' Signatures

15/
Sterling F. Tremayne, Chair

Public

15/
Michael Lau, Panelist

Public

15/
P. David Isenberg, Panelist

Industry

Date of Decision:

4/29/94