

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Michael P. Hegarty

vs.

Case #  
93-00276

Name of Respondents

James Messenger  
Leonard Rush  
Jeffrey Larsen  
Richard C. Payson  
S. Allan Williamson  
Richard Scafidi  
Greg Stuart  
National Financial Services Corporation  
Financial Securities Network, Inc.  
Peter S. Lawrence

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**REPRESENTATION**

Claimant, Michael P. Hegarty, was not represented by counsel at the hearing.

Respondents, James Messenger, Leonard Rush, Jeffrey Larsen and National Financial Services Corporation ("NFSC"), were represented by David C. Boch, Esq. from the law firm of Bingham, Dana and Gould located in Boston, Massachusetts.

Respondents, Richard C. Payson, S. Allan Williamson, Richard Scafidi and Financial Securities Network, Inc. ("FSNI"), were represented by Michael Unger, Esq. from the law firm of Goldstein & Manello, P.C., located in Boston, Massachusetts. (See "Other Issues Considered and Decided" on page 5 of this decision.)

Respondents, Greg Stuart and G.R. Stuart & Company, were represented by Steven E. Murra, Esq. from the law firm of Steven E. Murra & Associated, located in Maynard, Massachusetts.

Respondent Jeremiah Hegarty, was not represented by counsel at the hearing.

### CASE INFORMATION

Statement of Claim was filed on January 27, 1993.

Claimant's Submission Agreement was signed on January 21, 1993.

Statement of Answer and Motion to Dismiss was filed by Respondents, James Messenger, Leonard Rush, Jeffrey Larsen and NFSC, on April 28, 1993.

Respondents' Submission Agreements were signed on April 28, 1993, May 3, 1993, May 3, 1993 and April 28, 1993, respectively.

Statement of Answer with Counterclaim against Claimant and Third-party Claim against Jeremiah Hegarty was filed by Respondent, FSNI, on April 22, 1993.

Respondents' Submission Agreement was signed on July 28, 1993.

Statement of Answer was filed by Respondents, Greg Stuart and G.R. Stuart & Company, Inc., with Crossclaim against NFSC, Counterclaim against Claimant an Impleader action against Jeremiah Hegarty on April 12, 1993.

A Statement of Answer and Motion to Dismiss was filed by Respondent, Jeremiah Hegarty, on June 23, 1993.

By letter dated June 1, 1993, Claimant discontinued the action against Respondent, Peter S. Lawrence.

### HEARING INFORMATION

Hearing Dates/Sessions:	December 13, 1993	-	2 sessions
	January 21, 1994	-	1 session
	May 16, 1994	-	2 sessions
	August 29, 1994	-	1 session
	January 11, 1995	-	1 session

Hearing Location: NASD Offices located in Boston, Massachusetts.

### CASE SUMMARY

In his Statement of Claim, Michael Hegarty ("Claimant") seeks to recover commissions allegedly owed for the months of October, November and December, 1992, while within the employ of Respondent FSNI as a registered representative. Claimant alleges that on December 21, 1992, he was terminated by FSNI. Claimant allege that he is owed commissions in the amount of \$197,186.00 for the months of October, November and December, 1992.

In answer to the Statement of Claim, FSNI denies liability to Claimant for any commissions allegedly earned while Claimant was a registered representative of FSNI. FSNI alleges that, to the extent Claimant earned any commission during the time period alleged, such claim must be set-off against damages caused to FSNI by the conduct of Claimant and his brother, Jeremiah Hegarty. FSNI alleges that such conduct included, breach of fiduciary duty, negligence and violations of federal and state securities laws. FSNI further alleges that, because of such conduct, Claimant is estopped from benefitting from his wrongful conduct.

FSNI asserts a Counterclaim for damages against Claimant and a Third-Party Claim for damages against Jeremiah Hegarty.

Respondents, Greg Stuart ("Stuart") and G.R. Stuart & Company, Inc. ("G.R. Stuart"), in answer their to the Claim, deny any liability to the Claimant. Said Respondents allege that the claim, as to them, is without merit and as such should be dismissed. These Respondents maintain that Stuart did not do business with Claimant; that G.R. Stuart did not merge with FSNI but only acquired the broker network of FSNI; that at the time of the acquisition, Respondent FSNI was no longer able to continue in business as a broker-dealer; and that G.R. Stuart did not acquire the stocks nor liabilities of FSNI. Further, these Respondents maintain that they did nothing adverse to Claimant's interest.

Respondents, Stuart and G.R. Stuart, assert a Cross-Claim against FSNI for indemnification and impleaded Respondents Jeremiah Hegarty.

A Motion to Dismiss the Statement of Claim for lack of jurisdiction was submitted on behalf of Respondents, Richard S. Scafidi ("Scafidi"), Richard C. Payson ("Payson") and S. Alan Williamson ("Williamson"). Respondents allege that there is no jurisdictional basis upon which Claimant can assert a claim against them in their individual capacities as shareholders of FSNI. Respondents, Scafidi, Payson and Williamson, also allege that they have no liability, duty or obligation to the Claimant in their capacities as shareholders of FSNI. Furthermore, said Respondents contend that Claimant made no specific allegations against them.

Respondent, Jeremiah Hegarty, moves to dismiss the Third-Party claim against him and alleges that FSNI and NFSC failed in many aspects of their responsibilities including their responsibilities to report timely acknowledgement of assignments of options contracts, to report margin positions, to report margin positions including potential customer debit situations. This Respondent maintains that he acted only in his capacity as advisor.

A Motion to Dismiss was also submitted on behalf of NFSC, James Messenger, Leonard Rush and Jeffrey Larsen. These Respondents contend that the claim as to them should be dismissed based on the fact that there are no specific allegations of wrongdoing by Messenger, Rush and Larsen and that they were being sued only in their individual capacities as shareholders; that NFSC served only as a clearing broker for FSNI and does not segregate commissions earned by

individual brokers of an introducing firm. They allege that NFSC is not privy to the contractual relationship between an introducing broker and its employees.

In response to the Counterclaim interposed by Respondent FSNI, Claimant denies the allegation that he was negligent in placing customers' orders or in handling customers' accounts. Claimant asserts that Jeremiah Hegarty of Hyannis Trading Advisors, Inc. was the only individual authorized to place orders for customers and that Hyannis Trading was authorized by FSNI to place orders into FSNI's trading desk or call directly to the floor of the exchange using FSNI's number. Claimant also alleges that FSNI as Claimant's broker/dealer was well aware of the manner in which the Claimant's business was conducted during the May, 1991 through December, 1992 period.

#### **RELIEF REQUESTED**

Claimant requests money damages in the amount of \$197,186.00 which represents the commissions allegedly earned for the months of October, November, and December, 1992, as well as interest.

FSNI requests damages in the amount of \$4,100,000.00 together with interest, costs and attorneys fees in the Counterclaim against the Claimant. In addition, FSNI requests damages in the amount of \$4,100,000.00 with interest, costs and attorneys fees in the Third Party Claim against Jeremiah Hegarty.

Respondents, Stuart and G.R. Stuart, request that, Michael Hegarty's claim against them be dismissed as they are without merit. In their Crossclaim against NFSC, said Respondents request indemnification as well as to be held harmless against any and all losses, costs damages and expenses. In the Counterclaim against Claimant, these Respondents request that costs and expenses, including attorney fees, be assessed against Claimant. Finally, in their impleader action against Jeremiah Hegarty, they seek to have the latter be held liable to Claimant.

Respondents, NFSC, James Messenger, Leonard Rush and Jeffrey Larsen, request that the Statement of Claim be dismissed as to them.

Finally, Respondent, Jeremiah Hegarty, requests dismissal of the Counterclaim against him. In addition a Motion was submitted on behalf of Respondents, Richard S. Scafidi, Richard C. Payson and S. Alan Williamson, requesting dismissal of the claims against them.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies and

have agreed to receive conformed copy of the Award while the original remains on file with the NASD.

Respondent, Jeremiah Hegarty, did not appear at all of the hearing sessions. The Panel determined that notice of the hearing dates had been given pursuant to Section 26 of the *Code of Arbitration Procedure* ("Code") and proceeded with the hearing in his absence pursuant to Section 29 of the *Code*.

On December 13, 1993, Claimant withdrew all his claims against all individuals including G.R. Stuart; the only remaining parties were NFSC and FSNI. The Panel denied NFSC's Motion to Dismiss to allow claimant to submit a written response to the Motion. On January 18, 1994, the panel granted the Motion to Dismiss submitted by NFSC. Thus, the remaining issues were Claimant's claims against FSNI and FSNI's Counter-Claim against Jeremiah Hegarty and Claimant.

At the hearing on January 21, 1994, the only party in appearance was Claimant who requested that the Panel reconsider its decision to grant NFSC's Motion to Dismiss. This Panel adjourned the hearing to allow NFSC an opportunity to present its position.

After reviewing the parties' submissions and hearing arguments on Claimant's Motion for Reconsideration at the May 16, 1994 hearing, the Panel reaffirmed its decision to dismiss Claimant's claims against NFSC.

At the August 29, 1994 hearing, Claimant stated that his dismissal of Payson, Williamson and Scafidi was only in their capacities as shareholders but that he still intended to proceed with his claims against the individual Respondents in their capacities as principals of FSNI. After reviewing the record the Panel determined that Claimant did indicate that the dismissal of those Respondents was in their capacities as shareholders since their Motion to Dismiss was made relative to their capacities as shareholders. Accordingly, the hearing was rescheduled to January 11, 1995 for the individuals Respondents, Claimant, Jeremiah Hegarty and FSNI to appear.

On January 11, 1995, S. Allan Williamson appeared and was represented by Michael Unger, Esq. while Messrs. Scafidi and Payson appeared pro se. After hearing testimony from Williamson and Scafidi, the Panel dismissed all claims against Williamson as he was not a principal of FSNI. Claimant then indicated that he wished to dismiss the claims against Scafidi and Payson and bring back G.R. Stuart into the proceedings based upon documents which Scafidi gave him showing that FSNI's assets were transferred to G.R. Stuart.

The Panel denied Claimant's request to bring G.R. Stuart back as a Respondent if he dismissed the case against these Respondents. Claimant then dismissed the case against the individual Respondents in their capacities as principals of FSNI.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Based upon the Claimant's voluntary dismissal of the remaining individual Respondents in their capacities as principals of FSNI, the Panel dismisses the claims against FSNI.
2. The Counterclaim by FSNI against Michael Hegarty and the Crossclaim by FSNI against Jeremiah Hegarty were not pursued and are therefore dismissed.

**FORUM FEES**

Pursuant to Section 43(c) of the *Code*, the following Forum Fees are assessed.

Non-refundable Filing Fee: \$500.00

Hearing Session Fees: \$5,250.00 (7 sessions @ \$750.00 per session)

Total Fees: \$5,750.00

1. Claimant is assessed one-half the total forum fees, \$2,875.00. Claimant previously paid \$1,250.00 and owes a balance of \$1,625.00.
- 2. Respondent Scafidi is assessed \$2,875.00.

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

ARBITRATION PANEL

June Y. Kilmarx, Esq.	-	Public Chairperson
Theodore R. Turner, Jr.	-	Industry Panelist
Lowell A. Warren, Jr.	-	Industry Panelist

Concurring Arbitrator's Signature

  
June Y. Kilmarx, Esq.

Date of Decision:

4/6/95

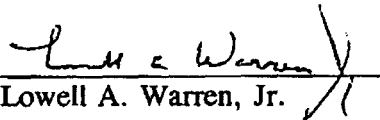
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Concurring Arbitrator's Signature

  
Lowell A. Warren, Jr.

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Concurring Arbitrator's Signature



Theodore R. Turner, Jr.

Date of Decision:

4/6/95