

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Robert Lyons, Jr.

93-00434

Name of Respondents

Michael P. Hegarty  
Jeremiah J. Hegarty  
Financial Securities Network, Inc.  
Hyannis Trading Advisors, Inc.

---

**REPRESENTATION**

For Claimant Robert Lyons, Jr. ("Claimant"): Anthony J. Hom, Attorney at Law, Philadelphia, PA

Respondent Michael P. Hegarty ("M. Hegarty") represented himself.

Respondent Financial Securities Network, Inc. ("FSN") was represented by counsel until October 18, 1993. Counsel of record, at that time, notified the NASD, Inc. of his withdrawal and mailings were sent to Mr. Richard Scafidi who did not appear on behalf Financial Securities Network, Inc.

Neither Respondent Jeremiah J. Hegarty ("J. Hegarty") or Respondent Hyannis Trading Advisors, Inc. ("HTA") appeared at the hearing.

**CASE INFORMATION**

Statement of Claim filed: February 24, 1993  
Claimant's Submission Agreement signed on: January 23, 1993

Statement of Answer filed by FSN on: August 5, 1993  
FSN did not file a Submission Agreement.

Statement of Answer filed by M. Hegarty on: April 15, 1993  
M. Hegarty did not file a Submission Agreement.

Joint Statement of Answer filed by J. Hegarty and HTA on: April 15, 1993.  
J. Hegarty and HTA did not file Submission Agreements.

### **HEARING INFORMATION**

Hearing Date/Session: May 4, 1994 - one session

Hearing Location: Ramada Inn, Albany, NY

### **CASE SUMMARY**

Claimant alleged, among other things, that M. Hegarty solicited Claimant's business and Claimant opened a discretionary account with FSN to trade options through a program managed by J. Hegarty and HTA. Claimant alleged that FSN sent him a brochure touting the expertise of J. Hegarty. Claimant alleged that based on the statements in the brochure he entered the option program managed by J. Hegarty and HTA. Claimant alleged that his account was handled entirely by J. Hegarty and M. Hegarty. Claimant alleged that he gave J. Hegarty a power of attorney with full discretion of power and authority to sell and purchase securities for his account. Claimant alleged that in less than six months Respondents had lost the \$250,000 he had invested and that he had a margin call for an additional \$250,000. Claimant alleged fraud, breach of fiduciary duty, churning, unsuitability, unauthorized trading, negligence, breach of contract and violations of the securities laws by all Respondents. Claimant alleged that Respondents FSN and HTA failed to properly supervise J. Hegarty or his account.

M. Hegarty denied all allegations of wrongdoing. M. Hegarty maintained that he, as a representative of FSN, contacted Claimant and solicited his business. M. Hegarty maintained, among other things, that Claimant opened a discretionary account with FSN to trade index options. M. Hegarty maintained that he told Claimant that HTA would manage the program and he explained to Claimant the risks and potential returns associated with index options. M. Hegarty maintained that he explained to Claimant that the Advisor making the trades for HTA would be his brother J. Hegarty. M. Hegarty maintained that he told Claimant that J. Hegarty had won the United States Trading Championship in the option division in 1990. M. Hegarty maintained that he also informed Claimant that past performance was not necessarily indicative of future success. M. Hegarty maintained that the index option program was suitable for Claimant. M. Hegarty maintained that he kept Claimant informed of the status of his account, and noted that Claimant was sent trade confirmations and monthly statements. M. Hegarty maintained that FSN never informed him of house generated margin calls or exchange generated margin calls. M. Hegarty maintained that failure to notify

or J. Hegarty of margin calls exposed Claimant to losses greater than the account equity. M. Hegarty maintained that his role was that of an order taker and that he properly handled his responsibilities.

FSN in its answer stated that it is no longer operating as a registered broker-dealer, that it sold its assets to G.R. Stuart & Company and it is no longer engaged in the securities business, nor is it an active corporation. FSN stated that it did not intend to defend this claim or participate or appear in the arbitration proceeding.

J. Hegarty denied all allegations of wrongdoing asserted by the Claimant and maintained that risks regarding options trading were fully explained to Claimant. J. Hegarty maintained that Claimant acknowledged the risks and expressed an interest in being aggressive. J. Hegarty maintained that all necessary documentation was properly filled out and signed by claimant and that Claimant signed a letter of understanding of the risks before the first trades were placed. J. Hegarty maintained that the trading was suitable, that vis-a-vis the documentation providing J. Hegarty with discretion, all trading in Claimant's account was authorized. J. Hegarty maintained that he knew his client, Mr. Lyons, well and that all trades he made fit within his stated investment objective. J. Hegarty maintained that during the period of November and December, 1992 substantial losses were incurred by accounts managed by HTA. J. Hegarty maintained that neither he nor HTA received any commissions generated by Claimant's account. J. Hegarty maintained that all trades were place for the sole purpose of attempting to generate profits for the Claimant. J. Hegarty maintained that because the margin department never communicated to either J. Hegarty or M. Hegarty the exchange generated margin call as required, Claimant's account was exposed to losses greater than the account equity. LJA

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$500,000, plus interest from the date of the losses, attorney's fees and costs.

Respondent M. Hegarty, J. Hegarty and HTA requested that Claimant's claim be dismissed in their entirety.

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

At the commencement of the hearing on May 4, 1994, Claimant withdrew all claims asserted against Respondents M. Hegarty, J. Hegarty and HTA.

Respondent FSN did not attend the arbitration, although it received due notice. The Panel pursuant to Section 12(a) and the bylaws of the NASD, Inc. exercised its jurisdiction over Respondent FSN, notwithstanding, its failure to submit an executed Submission Agreement and its failure to appear at the hearing.

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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Financial Securities Network, Inc. is liable to the Claimant and shall pay to the Claimant the sum of \$210,000; inclusive of interest.
2. All other claims are denied in their entirety.
3. The parties shall bear their respective costs and attorney's fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the hearing session fee of \$750 previously deposited by Claimant.

Concurring Arbitrator's Signature

Name

*James M. Beverley*  
James M. Beverley

Public/Industry

*Industry*

NASD Date of Decision: June 10, 1994

Lyons Award  
Case No. 93-00434  
Page 4

Respondent FSN did not attend the arbitration, although it received due notice. The Panel pursuant to Section 12(a) and the bylaws of the NASD, Inc. exercised its jurisdiction over Respondent FSN, notwithstanding, its failure to submit an executed Submission Agreement and its failure to appear at the hearing.

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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

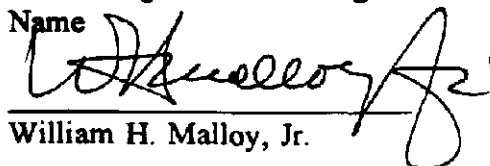
1. That Respondent Financial Securities Network, Inc. is liable to the Claimant and shall pay to the Claimant the sum of \$210,000; inclusive of interest.
2. All other claims are denied in their entirety.
3. The parties shall bear their respective costs and attorney's fees.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the hearing session fee of \$750 previously deposited by Claimant.

Concurring Arbitrator's Signature

Name

  
William H. Malloy, Jr.

Public/Industry

  
Dan Blie

NASD Date of Decision: June 10, 1994

Respondent FSN did not attend the arbitration, although it received due notice. The Panel pursuant to Section 12(a) and the bylaws of the NASD, Inc. exercised its jurisdiction over Respondent FSN, notwithstanding, its failure to submit an executed Submission Agreement and its failure to appear at the hearing.

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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Financial Securities Network, Inc. is liable to the Claimant and shall pay to the Claimant the sum of \$210,000; inclusive of interest.
2. All other claims are denied in their entirety.
3. The parties shall bear their respective costs and attorney's fees.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the hearing session fee of \$750 previously deposited by Claimant.

Concurring Arbitrator's Signature  
Name

  
David Fogel

Public/Industry

Public

NASD Date of Decision: June 10, 1994