

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Stuart and Anita Cole

NASD Arbitration
No. 93-00640

Name of Respondent(s)

Financial Securities Network, Inc.
G.R. Stuart & Company, Inc., Michael
Hegarty, and Jeremiah Hegarty

REPRESENTATION

For Claimants Stuart and Anita Cole: appearance in pro per

For Respondent Financial Securities Network, Inc.: no
appearance

For Respondent Michael Hegarty: Appearance in pro per, by
conference telephone from West Bridgewater, Massachusetts

For Respondent Jeremiah Hegarty: no appearance

For Respondent G.R. Stuart & Company, Inc.: no appearance;
dismissed by stipulation filed August 8, 1984.

CASE INFORMATION

Statement of Claim filed: February 22, 1993
Claimants' Submission Agreement signed: February 15, 1993

Statement of Answer filed by Respondent Financial Securities
Network, Inc.: August 17, 1993
Financial Securities Network, Inc.'s Submission Agreement
signed: August 20, 1993

Statement of Answer filed by Respondent Michael Hegarty:
December 1, 1993

Statement of Answer filed by Respondent Jeremiah Hegarty:
December 1, 1993

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): Pre-Hearing Order issued August 15, 1994

Hearing Date(s)/Session(s): August 17, 1994 (two sessions)

Hearing Location: Beverly Hills, California

CASE SUMMARY

Claimants alleged that Respondent Michael Hegarty, individually and as a registered representative of Respondent Financial Securities Network, Inc., together with Respondent Jeremiah Hegarty (President of an Investment Advisor, Hyannis Trading Advisors, Inc. and a Registered Representative of National Financial Services Corp.) claimed to be experts in OEX Options and had won industry awards; that in reliance on such representations, claimants as trustees of their family trust had opened an account with respondent Financial Securities Network, Inc., and on October 14, 1992, invested therein \$25,000; by November 27, 1992 the net value of the account had dropped to \$10,655; that on or about such date they instructed Michael Hegarty (individually and as representative of his employer and of his brother Jeremiah Hegarty) to hold up further trading; that trading nonetheless resumed without Claimants' authorization; that the account was closed on approximately January 6, 1993; that the net value then remaining of \$2,935 was thereupon returned by Respondent Financial Securities Network, Inc. to Claimants. Claimants alleged fraud, breach of contract, churning, negligence, incompetence, and failure to follow instructions to cease trading.

The original Statement of Claim named National Financial Services Corp. as a Respondent in its capacity as clearing broker for Financial Securities Network, Inc.; Claimants filed their amended Statement of Claim dated November 1, 1993 eliminating National Financial Services Corp. as a Respondent but adding G.R. Stuart & Co., Inc. in its capacity as alleged successor to the business of Financial Securities Network, Inc. Hyannis Trading Advisors, Inc. was not named as a Respondent.

Respondent Financial Securities Network, Inc. in its Answer alleged that it had sold its assets to G.R. Stuart & Company; that it was no longer engaged in the securities business; and stated it did not intend to defend against the claim or participate or appear in the proceeding.

Respondent Michael Hegarty in his Answer admitted he had been a registered representative of National Securities Network, Inc.; alleged that he was terminated as such on December 21, 1992; that as a registered representative he had

recommended to Claimants that they open a discretionary account with Respondent Financial Securities Network, Inc. to trade index options, such account to be managed by his brother Jeremiah Hegarty as President of Hyannis Trading Advisors, Inc., an investment advisor; that he fully explained the nature of the account and the risks; that Claimants executed all the account paperwork which included recognition of the risks and the methods of trading proposed; that Jeremiah Hegarty was to make all the trading decisions; that the Claimants were sophisticated investors and understood the documentation; that neither he nor Jeremiah Hegarty had received any compensation resulting from the account; that the Claimants' account suffered losses because neither Financial Securities Network, Inc. nor National Financial Securities, Inc. had ever informed him of margin calls; and that the losses resulted from the gross negligence of such entities.

Respondent Jeremiah Hegarty in his Answer denied liability for essentially the same reasons as were given by Respondent Michael Hegarty.

Respondent G. R. Stuart & Company in its Answer alleged that it had acquired certain assets but no liabilities of Financial Securities Network, Inc. and that Claimants were not its customers.

RELIEF REQUESTED

Claimants' requested damages include their alleged capital loss of \$22,065, punitive damages of \$7,935, interest at 9% of \$3,790, reimbursement of its expert witness fee of \$750 and reimbursement of its filing fee herein of \$400, for a total of \$34,940.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the presiding arbitrator reviewed and considered the written positions of the parties including a motion to postpone the hearing by Respondent Michael Hegarty. Such motion was denied on July 14, 1994. The same respondent on August 10, 1994 moved that the case be heard by teleconference; the arbitrator on August 15, 1994 ordered that the arbitration hearing would proceed as scheduled but that such respondent, should he determine to not be present at the hearing, could participate at his own expense by conference telephone. He did so.

SPECIAL FINDINGS

The undersigned arbitrator submits the following findings with respect to this Award:

a. The documentary evidence reflected that Jeremiah Hegarty, in addition to being president of Hyannis Trading Advisors, Inc. was also a registered representative of National Financial Services Corporation, the clearing broker for Financial Securities Network, Inc. Since neither the investment advisory firm nor the clearing broker is a party to this proceeding, the presiding arbitrator cannot determine its or their respective liability, if any, for Claimants' losses.

b. The presiding arbitrator is making his award upon the evidence produced notwithstanding the failure to appear at the hearing of both Respondents Jeremiah Hegarty and Financial Securities Network, Inc. The presiding arbitrator is assured that due notice of the date and time of the hearing was given to the absent parties. This award is not made solely on the default of such parties; rather the presiding arbitrator has required the parties present to submit such evidence as the arbitrator requires for the making of an award.

c. Insufficient evidence was introduced to reflect how much, if any, of the Claimants' losses in their account resulted from commissions charged against the account.

d. The evidence reflects that Claimants received due and adequate written notice and warning of the risks inherent in index options trading; that their participation in same was voluntary and not induced by misrepresentations or omissions to state material facts. But the evidence further reflects that Respondents Financial Securities Network, Inc., Michael Hegarty, and Jeremiah Hegarty each breached their agreement with Claimants by failing to halt trading in the account as instructed on or about November 27, 1992; all trading in the account thereafter was unauthorized.

e. Claimants testified that prior to the hearing, and in connection with its stipulation for Dismissal, Respondent G. R. Stuart & Company, Inc. paid Claimants \$2,000 in settlement of their claim against it.

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. In satisfaction of Claimants' claims, Respondents Financial Securities Network, Inc., Michael Hegarty and Jeremiah Hegarty are jointly and severally liable for and shall pay to Claimants the sum of \$6,870, together with interest computed at 7% of \$5,720 per annum from November 27, 1992 until the date of payment of this Award.

2. Claimants' prayer for punitive damages is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$300.00 hearing session deposit previously deposited by the Claimants. Forum fees are to be paid jointly and severally by Respondents Financial Securities Network, Inc., Michael Hegarty and Jeremiah Hegarty and are calculated as follows:

Two hearing sessions at \$300.00/session	=	\$600.00
Total fees assessed	=	\$600.00

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

ARBITRATOR

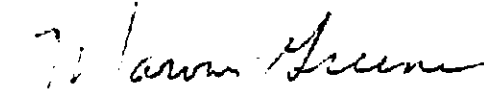
Name

Marvin Greene, Esq.

Public/Industry

Public Arbitrator

Presiding Arbitrator's Signature



Marvin Greene, Esq.

Date of Decision: August 25, 1994

Date Served: 08/30/94