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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

George F. Haltom and Joyce M. Haltom

93-00950

Name of Respondents

✧ Blunt, Ellis & Loewi, a division of
Kemper Securities, Inc.;
Steven R. Middendorf

REPRESENTATION

For Claimants: George F. Haltom and Joyce M. Haltom ("Haltom") were represented by Charles A. Siegel III, Esq. of Siegel & Wolff, P.C., located in St. Louis, Missouri.

For Respondents: Blunt, Ellis & Loewi, a division of Kemper Securities, Inc. ("Blunt Ellis"), was represented by Michael H. Schaalman, Esq. of Quarles & Brady, located in Milwaukee, Wisconsin.

Steven R. Middendorf ("Middendorf") was represented by Timothy R. Anderson, Esq. of Clooney & Anderson, located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed: March 12, 1993.

Claimants' Submission Agreement signed on: December 28, 1992.

Statement of Answer filed by Respondent Blunt Ellis on: July 15, 1993.

Respondent Blunt Ellis did not file an executed submission agreement.

Statement of Answer filed by Respondent Middencorf on: May 13, 1993.

Respondent Middencorf's Submission Agreement signed on: May 13, 1993.

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HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: February 22, 1994 for Two (2) sessions;
February 23, 1994 for Two (2) sessions; and
February 24, 1994 for Two (2) sessions.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimants alleged that Respondent Middendorf, while employed by or acting as an agent for Respondent Blunt Ellis, misrepresented or omitted specific facts regarding the quality and safety of common stock purchased for Claimants' account; sold the diverse securities in the Haltoms' original portfolio and purchasing securities unsuitable given the Haltoms investment objectives; failed to warn the Haltoms of the risks of trading in a margin account; and traded on margin in excessive amounts on speculative securities. In addition, Blunt Ellis was alleged to have failed to diligently supervise Middendorf and maintain an adequate system of supervision to prevent such actions from occurring. Based upon these allegations, the Haltoms asserted claims for misrepresentation and fraud; breach of contract; negligence; and breach of fiduciary duty.

Respondent Blunt Ellis denied the material allegations of the Statement of Claim, alleging that:

1. The Haltoms were speculative investors who liked to take large positions in the investments they made and were experienced in a variety of securities and options;
2. At the time the Haltoms opened their account at Blunt Ellis, they signed a General Account (Margin) Agreement and a Customer Options Agreement. In the Options agreement, the Haltoms indicated they had ten years prior investment experience, including commodities and options and that their investment objective was trading. In addition, they transferred from their previous broker all their securities positions, including a six-figure margin debt they had incurred at the prior broker;
3. Middendorf frequently consulted with Mr. Haltom about the nature, quality and performance of the securities in the account. Haltom was aware of the price fluctuations in the securities in his account;
4. All purchases and sales were authorized by Haltom in advance. Sales were made to take short-term profits or meet margin calls;

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5. The equity in the Haltoms' account was substantially reduced by the speculative positions they took in a few stocks. Haltom continued to speculate even after taking several losses in one stock, placing two unsolicited orders for Pantera stock after the price had tumbled. Haltom diminished the value of his account by maintaining his position in stocks whose value was declining;

6. All transactions in the account were authorized by Haltom. The Haltoms were aware of the high risk of the securities purchased and Blunt Ellis, through Middendorf, did not misrepresent the nature or quality of the Pantera stock; and

7. Blunt Ellis had no responsibility to monitor any position opened in the Haltoms' account because the account was not a discretionary account. Any sales of stock to cover margin calls were authorized in advance by Haltom.

In addition, Blunt Ellis asserted as affirmative defense that the claims are barred by the statutes of limitation and that no act or commission of Blunt Ellis or Middendorf caused the losses that the Haltoms experienced.

Respondent Middendorf denied the material allegations of the Statement of Claim, alleging that:

1. The Haltoms were sophisticated investors who did not rely on anything said by Middendorf in opening their account;
2. The Haltoms were aware of the financial prospects and conditions of the Pantera corporation, purchased its shares with full knowledge of its financial condition and had acquired the shares over the course of several days based on their own independent evaluation of the stock;
3. All transactions carried out by Middendorf were done with the prior express approval of the Haltoms and at their direction;
4. The Haltoms were made aware of all information that Middendorf possessed regarding Pantera, and instead of liquidating their holdings, they purchased, unsolicited, additional shares of the stock as the price fell; and
5. Prior to becoming a customer of Blunt Ellis, the Haltoms had conducted securities business on margin.

RELIEF REQUESTED

Claimants requested an award against Respondents for actual damages in excess of \$750,000.00; punitive damages in an amount the Arbitrators determined was fair and reasonable; and whatever

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other relief the Arbitrators deemed proper.

Respondent Blunt Ellis requested that the claim be dismissed in its entirety.

Respondent Middendorf requested that all counts of the claim be dismissed and that no award be entered against him personally.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Blunt Ellis, a division of Kemper Securities, Inc., did not file an executed submission agreement, but answered, appeared and testified at hearing, and pursuant to Section 12 of the NASD Code of Arbitration Procedure, is required to submit to arbitration.

On February 24, 1994, Respondent Blunt Ellis, a division of Kemper Securities, Inc., filed a Motion to Dismiss Count II of the Statement of Claim. Claimants were given ten days to respond. In addition, Respondent Middendorf was allowed to present his closing argument in writing. All post-hearing submissions were forwarded to the panel. Upon review, the Panel hereby denies the Motion to Dismiss Count II of the Statement of Claim.

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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Blunt Ellis & Loewi, a division of Kemper Securities, Inc., and Steven Middendorf are jointly and severally liable for and shall pay to Claimants George F. Haltom and Joyce M. Haltom the sum of \$567,000.00 in actual damages;
2. The claims for punitive damages are hereby dismissed and denied;
3. The Motion to Dismiss Count II of the Statement of Claim is hereby denied;
4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
5. All requests for relief not expressly granted are hereby denied.

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FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Six (6) hearing sessions x \$1,000.00 per session = \$6,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 non-refundable filing fee and refund the \$1,000.00 hearing session deposit previously deposited by the Claimants, George F. Haltom and Joyce M. Haltom. Respondents Blunt Ellis & Loewi, a division of Kemper Securities, Inc. and Steven Middendorf are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$6,000.00.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Michael J. Hart
Michael J. Hart
Public Arbitrator
Chairperson

September 8, 1994

/s/ Gerald Cohen, Esq.
Gerald Cohen, Esq.
Public Arbitrator

September 7, 1994

/s/ Joan W. Fox
Joan W. Fox
Industry Arbitrator

September 6, 1994

For NASD Use Only

Date of Service of Award: 9-14-94