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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Berto Lopez

93-01348

Name of Respondents

National Financial Services Corp.
* Financial Securities Network Inc.
Michael P. Hegarty
Jeremiah H. Hegarty
Hyanis Trading Advisors

REPRESENTATION

Claimant, Berto Lopez ("Lopez") was represented by Jane A. Sirak, Esq. of West Palm Beach, FL.

Respondent, National Financial Services Corp. ("National Financial") was represented by David C. Boch, Esq. of Bingham, Dana & Gould, Boston, MA.

Respondent, Financial Securities Network Inc. ("Financial Securities") was represented by Michael Unger, Esq. of Goldstein & Manello, of Boston, MA.

Respondent, Michael P. Hegarty ("Michael Hegarty") was pro se.

Respondent, Jeremiah H. Hegarty ("Jeremiah Hegarty") was pro se.

Respondent, Hyanis Trading Advisors was pro se.

CASE INFORMATION

Statement of Claim filed: January 8, 1993.

Claimant's Submission Agreement signed on: January 8, 1993.

Statement of Answer filed by Respondent, National Financial on: August 6, 1993.

Respondent, National Financial's Submission Agreement signed on: August 5,

1993.

Statement of Answer filed by Respondent, Financial Securities on: July 29, 1993
Respondent, Financial Securities' Submission Agreement: None

Statement of Answer filed by Respondent, Michael Hegarty, on: June 29, 1993
Respondent, Michael Hegarty's Submission Agreement: None

Statement of Answer filed by Respondent, Jeremiah Hegarty, on: July 15, 1993
Respondent, Jeremiah Hegarty's Submission Agreement: None (See other issues.)

Hyanis Trading Advisors failed to file an Answer or submit a Submission Agreement.

HEARING INFORMATION

On January 9 and 10, 1995 in Fort Lauderdale, Florida hearings lasting 5 sessions were conducted.

CASE SUMMARY

Claimant brought claims against Michael Hegarty, Jeremiah Hegarty, and Hyannis Trading Advisors with regard to Fraud; Florida Statute 517.01, et. seq.; Florida Statutes 772.101, et. seq.; and Breach of Fiduciary Duty. Respondent Jeremiah Hegarty was released through bankruptcy and the Claimant dismissed claims against Jeremiah Hegarty and Hyannis Trading Advisors prior to the hearing. Respondent, Financial Securities, went out of business prior to the hearing. That left Claimant with claims against Michael Hegarty and National Financial. Claimant also brought claims against National Financial Services, the clearing and carrying firm, and alleged Negligence and Gross Negligence; Civil Theft under Florida Statutes 772.101, et. seq.; Breach of Contract; third party beneficiary of the Clearing Agreement; violations of Florida law under Florida Statutes 517.01, et. seq.; as well as federal securities law including Reg T as well as the Rules, Constitutions and Regulations of Exchange and SRO's.

Respondent, Michael Hegarty, denied all allegations of wrongdoing. Respondent asserts that he informed Claimant of inherent risks associated with option trading. Respondent also asserts that he was never informed of the numerous margin calls and his only obligation was to implement the advisor's decisions.

Respondent, National Financial, denied all allegations of wrongdoing. Respondent asserts that it complied fully with its obligations under the clearing agreement and had no duty to advise or monitor Claimant's trading. Respondent also asserts that there were no margin violations in Claimant's account, no private right of action for alleged margin violation, and Respondent complied with applicable margin requirements. Respondent asserts that Claimant's losses were

the result of market conditions and not due to any actions or omissions by Respondent. Additionally, Respondent raises the defenses of estoppel, ratification and failure to mitigate damages.

Respondent, Financial Securities, asserts that they are no longer operating as a registered broker-dealer and is no longer engaged in the securities business. Additionally, Respondent does not intend to defend against Claimant's Statement of Claim or participate or appear in the arbitration proceeding.

RELIEF REQUESTED

Claimant requested compensatory damages of \$98,000.00 plus punitive damages of \$300,000.00 plus costs, attorney's fees, prejudgment interest and treble damages.

Respondent, National Financial, requested dismissal of the claim and payment of the debit balance of \$23,481 plus interest.

Respondent, Michael Hegarty, requested dismissal of the claim.

Respondent, Financial Securities, did not make a request for relief.

OTHER ISSUES CONSIDERED & DECIDED

1. In light, of Jeremiah Hegarty's bankruptcy filing and due to the automatic stay provisions of the Bankruptcy Code, J. Hegarty was dismissed without prejudice from the arbitration.
2. Respondent, Financial Securities, failed to submit an executed Submission Agreement or Statement of Answer and did not appear at the hearing. The Panel finds that Financial Securities was required by Section 12 and 25 to file an Answer and Submission Agreement. This Panel finds that it has jurisdiction pursuant to Section 12 of the NASD Code of Arbitration Procedure because Financial Securities was an NASD member firm at the time this controversy arose. Based on the evidence contained in the record of proceedings, this panel finds due notice to Respondent Financial Securities
3. Claimant dismissed his claim against Hyanis Trading Advisors at the hearing.
4. 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. Respondent, Financial Securities, is found liable and shall pay to Claimant the amount of \$75,000.00 plus interest at the rate of 12% per annum in the amount of \$18,964.29 for a total due to the Claimant of \$93,964.29.
2. Respondent, Financial Securities, is also found liable and shall pay to the Claimant the further amount of \$250,000.00 for punitive damages. The panel bases its authority to award punitive damages on the Federal Arbitration Act and the underlying case law. The panel finds that Financial Securities' conduct was so egregious as to warrant an award of punitive damages.
3. Respondent, Financial Securities, is also found liable for attorney's fees and are ordered to pay the Claimant the further amount of \$30,000. The Panel bases its authority to award attorney's fees on the Federal Arbitration Act and the case law interpreting that Act.
4. Respondents, National Financial and Michael Hegarty, are not found liable and therefore, all claims against them are hereby dismissed.
5. Claimant, is found not liable to National Financial and therefore, the claim against him is hereby dismissed.

OTHER COSTS

Respondent, Financial Securities, is also found liable and shall pay to the Claimant the further amount of \$5,400.00 for expert witness costs.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,000 (5 sessions x \$1,000.00).

1. Claimant is hereby assessed \$1,666.66, for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$666.66 payable to the National Association of Securities Dealers, Inc.

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2. Respondent, National Financial, is hereby assessed \$1,666.66, payable to the National Association of Securities Dealers, Inc.

3. Respondent, Michael Hegarty, is hereby assessed \$1,666.67, payable to the National Association of Securities Dealers, Inc.

4. Respondent, Michael Hegarty, is hereby ordered to pay NASD \$1,000.00 for postponement fee assessed.

The NASD shall retain the session deposit of \$1,000.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

151
Mark C. Perry, Esq.

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Abe Mintz

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Donald R. McGahan

Date of Decision:

2-17-95