

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Richard B. and Mary M. Tongue

93-01441

Name of Respondent(s)

Keith Aufhauser
Peter Theodorellis

REPRESENTATION

For Claimant: Richard B. Tongue.

For Respondent Keith Aufhauser: Keith Aufhauser.

For Respondent Peter Theodorellis: Diana Armenakis, Esq. of Armenakis & Armenakis.

CASE INFORMATION

Statement of Claim filed: April 12, 1993.

Claimant, Richard B. Tongue's Submission Agreement signed on: April 8, 1993.
Claimant, Mary M. Tongue's Submission Agreement signed on: April 8, 1993.

Statement of Answer and Cross-Claim filed by Respondent, Keith Aufhauser on:
August 3, 1993.

Respondent, Keith Aufhauser's Submission Agreement signed on: August 2,
1992.

Statement of Answer filed by Respondent, Peter Theodorellis on: August 3, 1993

Respondent, Peter Theodorellis's Submission Agreement signed on: July 29,
1993.

HEARING INFORMATION

Hearing Dates/Sessions: January 13, 1994/Two sessions
January 14, 1994/Two sessions

Hearing Location: NASD, Inc., New York City, New York.

CASE SUMMARY

Claimants allege that they opened an account, transferring two checks totalling \$45,000, and that Respondent Peter Theodorellis ("Theodorellis") became their agent and conducted the account as per Claimant's instructions until May 18, 1992 when Respondent Theodorellis purchased 10 shares of Walt Disney on option, telling Claimants that he would have the account removed from their record and the amount returned to their account. Claimants further allege that Respondent Theodorellis called almost every day regarding their account and that they told Respondent Theodorellis to do what he felt was best. Claimants further allege that on June 26, 1992 they told Respondent Theodorellis that they thought they should get out of the market for a while and Respondent Theodorellis said that they were out of the market when asked on July 3, 1992. Claimants further allege that shortly after this conversation they began receiving confirmations with which they were totally unfamiliar and when they questioned Respondent Theodorellis he told them that their account had been mixed up with another client's and not to worry. Claimants further allege that on August 19, 1992, Respondent Theodorellis said that they were still out of the market and that the value of their account was \$33,764. Claimants further allege that on September, 3 1992 they received a statement showing a net balance of \$664.33. Claimants allege that K. Aufhauser & Co., Inc. is primarily liable and Respondent Peter Theodorellis is secondarily liable for Respondent Theodorellis' unauthorized trading.

Respondent Aufhauser maintains that he was told that Claimant Tongue granted Respondent Theodorellis discretionary authority on July 9, 1992 and that Claimant Tongue reaffirmed the grant of discretionary authority on July 10, 1992. Respondent Aufhauser maintains that Claimant Tongue's own claim states that trading authority was withdrawn after June 26, 1992 and stock trades after that date made a profit so there are no damages. Respondent Aufhauser further maintains that the option trades were profitable as a whole so there are no damages. Respondent Aufhauser further maintains that the losses in options subsequent to July 10, 1992 are Claimant Tongue's responsibility because he knew that Respondent Theodorellis was lying and should have told Respondent Aufhauser. Respondent Aufhauser further maintains that Claimant Tongue's refusal to give straight answers to him, either in writing or during several telephone conversations released Respondent Aufhauser from responsibility.

Respondent Aufhauser Cross-Claims for \$15,809, plus interest regarding a

promissory note from Respondent Theodorellis to Respondent Aufhauser. Respondent Aufhauser also makes a claim against Respondent Theodorellis for indemnification.

RELIEF REQUESTED

Claimant requests an award for damages in the amount of \$32,044.05, plus any additional amounts for damages to defray the anxiety, despair and expense which the NASD Board of Arbitration may find.

Respondent Keith Aufhauser requests that the Claim be dismissed in its entirety. Respondent Keith Aufhauser also requests an award against Respondent Peter Theodorellis for damages in the amount of \$15,809, plus interest in the amount of \$1,106, and for indemnification, plus reasonable interest and costs related to defending the Claim and the related NASD and FBI investigations.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrator(s) has/have decided in full and final resolution of the issues submitted for determination as follows:

- a) Respondent Peter Theodorellis is hereby liable and shall pay to the Claimants \$20,000 plus interest at the legal rate from the date of this award.
- b) Respondent Keith Aufhauser and K. Aufhauser & Company, Inc. are hereby jointly and severally liable with Respondent Theodorellis for \$15,000 of the \$20,000 award in favor of Claimants in paragraph a) above, plus interest at the legal rate from the date of this award.
- c) Respondent Peter Theodorellis shall pay to Respondents Keith Aufhauser and K. Aufhauser & Co., Inc. any amount paid by either of them pursuant to the above award with interest at the legal rate from the date of any such payment.
- d) Respondent Peter Theodorellis shall pay to K. Aufhauser & Company, Inc. the sum of \$16,223.99 with interest from August 1, 1993 at 5% per annum, on account of the notes given by Respondent Peter Theodorellis to K. Aufhauser & Company, Inc.
- e) Respondent Keith Aufhauser and K. Aufhauser & Co., Inc. shall jointly and severally be liable for 1/2 of the forum fees for this arbitration and Peter Theodorellis shall be liable for 1/2 of the cost of this arbitration.

FORUM FEES

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

4 sessions X \$400 =	\$1,600.00
Filing fee for claim:	\$ 120.00
Filing fee for cross-claim:	\$ 500.00
TOTAL:	\$ 2220.00

Respondents Keith Aufhauser, K. Aufhauser & Company, Inc shall pay to the NASD, Inc. forum fees in the amount of \$1,110.00 to be off set by the \$600.00 hearing session deposit and the \$500 filing fee already paid to the NASD.

Net due: \$10.00

Respondent Peter Theodorellis is hereby liable and shall pay the NASD the sum of \$1,110.00. This amount shall be satisfied by reimbursing the Claimant for the hearing session deposit in the amount of \$400 and the filing fee in the amount of \$120.00 and paying the NASD the sum of \$590.00.

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

Arbitrator Signature

Public/Industry

Joseph Fromer
Joseph Fromer

✓
Public

NASD Date of Decision: March 2, 1994

Arbitrator Signature

Public/Industry

David N. Brainin

David N. Brainin, Esq.

Public

Date of Decision: January 14, 1994

NASD Date of Decision: March 2, 1994

Arbitrator Signature

Public/Industry

Alexander Stewart Barnes
Alexander Stewart Barnes

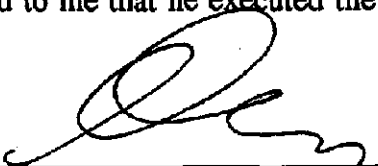
Industry

NASD Date of Decision: March 2, 1994

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 7 day of March, 1994, before me personally appeared **David N. Brainin, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



DAVID N. BRAININ
Attorney at Law, State of New York
No. 24-4940303
Admitted to Kings County
Court July 18, 1994 4

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 2nd day of April, 1994, before me personally appeared Joseph Fromer known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



VALERIE J. GILLET
Notary Public, State of New York
No. 24-4940303
Qualified in Kings County
Commission Expires July 18, 1999 4

STATE OF: New York
COUNTY OF: New York

S.S.:

On this *2nd* day of *March*, 1994, before me personally appeared **Alexander Stewart Barnes** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



VALERIE L. BAILEY
NOTARY PUBLIC, State of New York
No. 24-4940303
Qualified in Kings County
Expires July 18, 1994

4