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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimants

Charles E. Rowland and Bette Ann Rowland

v.

Name of Respondents

Drake Capital Securities and Greg Norlander

NASD Arbitration
No. 93-01938

9/95 ✓

REPRESENTATION

For Claimants: Dennis G. Merenbach, Esq. and J. Leo Federman,
Investors Rights Association,
Santa Barbara, California

For Respondent Drake Capital Securities ("Drake"):

H. Thomas Fehn, Esq., Fields, Fehn & Sherwin,
Los Angeles, California

For Respondent Greg Norlander:

No appearance

CASE INFORMATION

Statement of Claim filed: August 11, 1993

Claimants' Submission Agreement signed: February 4, 1993

Statement of Answer filed by Respondent Drake: November 4, 1993

Respondent Drake's Submission Agreement signed: November 4, 1993

Statement of Answer filed by Respondent Greg Norlander: Although duly served, no answer was filed.

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Respondent Norlander's Submission Agreement: None filed. Mr. Norlander is subject to NASD jurisdiction in accordance with NASD Code of Arbitration Procedure Section 12.

HEARING INFORMATION

Prehearing Conferences: November 14, 1994/one session

Hearing Date: February 21, 1995/2 sessions

Hearing Location: Beverly Hills, California

CASE SUMMARY

Claimants alleged in their Statement of Claim that respondents had, in servicing their accounts, engaged in fraud and deceit, breach of fiduciary duties, negligence, breach of contract, negligent supervision, churning, and violation of various NASD and New York Stock Exchange Rules; that Respondent Norlander was referred to them "as a representative in whom trust and confidence could be placed"; that their investment objectives at Drake were "conservative income, preservation of capital, safe investment, and anticipated income"; that they had limited prior investment experience. No specific facts regarding the types of securities were alleged other than that claimants' trading activities in their accounts at Drake, between January 1992 and June 1992, consisted of 17 trades in seven issues, reflecting (upon computation) net losses of approximately \$3,000.

Respondent Norlander did not file an Answer to the Statement of Claim. Respondent Drake in its Answer alleged that Respondent Norlander was an "in-law" of claimants; and that claimants' account was adequately supervised.

The facts presented at the hearing by both claimants and respondent Drake differed substantially from the minimal facts alleged in their respective pleadings. The only testimony was that of claimants. Respondent Norlander was absent. Respondent Drake presented no testimony other than cross-examination of claimants. From claimants' testimony, it appears that respondent Norlander was, and is, claimants' son-in-law; that he acted as their investment broker at two broker-dealer firms prior to his employment at Drake in or about November 1991; that he was hospitalized, and terminated by Drake, in or about June 1992; that he and his wife declared bankruptcy in or about August 1992; that he and his wife now live in another state; that he no longer is in the securities business; that claimants filed no claim in the Norlanders' bankruptcy estate; that claimants' current relationship with their son-in-law is minimal. Claimants' counsel stated to the panel that claimants have filed a separate arbitration proceeding against one of the prior broker-dealer firms.

Claimants further testified that they received no confirmations of transactions from Drake; that

most of the transactions in their accounts were unauthorized; that they did not understand their monthly statements; that respondent Norlander assured them that the monthly statements showing purchases, sales, margin charges, and losses, were "computer errors" or "accounting errors"; that as a result, claimants had lost in their two accounts at Drake an aggregate of \$29,256 resulting from unauthorized transactions. On cross-examination, it appeared that claimants had authorized some transactions, reducing their aggregate losses from unauthorized transactions to \$4,205. It appears that respondent Drake had hired respondent Norlander as a registered representative after having received NASD Forms U-5 reflecting 19 separate complaints against respondent Norlander in the two year period preceding his hiring by Drake. No evidence was presented by respondent Drake to reflect any supervision of respondent Norlander - nor to counter claimants' evidence of lack of supervision by Drake.

RELIEF REQUESTED

Claimants request rescission and damages in unstated amounts for compensatory damages, interest, costs, attorneys' fees, punitive damages, and exemplary damages.

OTHER ISSUES CONSIDERED AND DECIDED

(A) 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 original remains on file with the NASD.

(B) The arbitrators have determined that Respondent Norlander has been duly served with the statement of claim and all notices herein.

(C) Prior to the hearing, the Chairperson was presented with and considered motions by respondent Drake for discovery orders (granted), dismissal (denied), sanctions (denied in part and deferred in part), and objections to the Chairperson's order assessing adjournment fees to be shared equally by each side (held in abeyance pending the hearing). One pre-hearing conference was heard by the Chair. At the conclusion of the hearing, all open motions were withdrawn by respondent Drake.

(D) At the hearing, claimants' counsel Merenbach proposed that co-counsel Federman either testify as an expert witness on Regulation T, or be permitted to argue applicability of such Regulation. The panel declined to hear the testimony but affirmed counsel's right to argue the matter. The matter was not included in claimants' counsel's closing argument.

(E) The arbitrators are making this award upon the evidence produced notwithstanding Respondent Norlander's failure to appear at the hearing. The arbitrators are assured that due notice of the date and time of the hearing was given to the absent party. This award is not made solely on the default of such party; rather the arbitrators have required the parties present to

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submit such evidence as the arbitrators require for the making of their award.

(F) Insufficient evidence was introduced to support any finding of fraud and deceit, breach of contract, churning, or violation of any industry rules other than the responsibility of Drake to know its customer and supervise its registered representative.

SPECIAL FINDINGS

The undersigned arbitrators find as follows:

1. Certain transactions occurred in claimants' accounts with respondent Drake which were unauthorized by them and which resulted in monetary loss to them.
2. Respondent Drake did not supervise respondent Norlander in his handling of claimants' accounts, resulting in unauthorized transactions in the claimants' accounts which gave rise to resultant loss in such accounts. Respondent Drake had the responsibility to supervise, particularly in light of the complaints alleged in Forms U-5 as set forth by Norlander's former employer.

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:

(A) In satisfaction of claimants' claims, respondents Drake Capital Securities and Greg Norlander are jointly and severally liable for and shall pay to claimants the sum of \$4,205, together with interest computed at 7% per annum from June 16, 1992, until the date of payment of this award.

(B) Claimants' prayer for rescission, attorneys' fees, punitive damages, and exemplary 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 refund the \$600 hearing session deposit previously deposited by the Claimants. Adjournment fees are to be split between the parties and forum fees are assessed as follows:

Two hearing sessions @ \$600/session:	-	\$ 1,200.00
One pre-hearing session @ \$150/session:	-	<u>150.00</u>
Total fees which may be assessed:	-	\$ 1,350.00 (only \$1,200.00 assessed)

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Claimants assessed one-half of adjournment fees: - \$ 150.00

Respondent Drake's assessment of forum fees: - \$ 1,200.00

One-half of adjournment fees: - \$ 150.00

Total due: - \$ 1,350.00

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

ARBITRATORS

Name Public / Industry

Marvin Greene

Public Arbitrator


Charles D. Behm

Public Arbitrator

Charles A. Graham

Industry Arbitrator

Concurring Arbitrators' Signatures



Marvin Greene

Charles D. Behm

Charles A. Graham

Date Served: 4-6-95

Date of Decision:

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Claimants assessed one-half of adjournment fees:	-	\$ 150.00
Respondent Drake's assessment of forum fees:	-	\$ 1,200.00
One-half of adjournment fees:	-	\$ 150.00
Total due:	-	\$ 1,350.00

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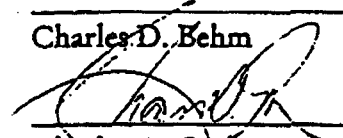
<u>Name</u>	<u>Public / Industry</u>
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Marvin Greene	Public Arbitrator
Charles D. Behm	Public Arbitrator
Charles A. Graham	Industry Arbitrator

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