

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Hearing Dates/Sessions: April 18, 1994 - two sessions
April 19, 1994 - two sessions
June 10, 1994 - one session
September 8, 1994 - one session
September 9, 1994 - two sessions

Hearing Location: NASD Arbitration Office, New York, NY.

CASE SUMMARY

Claimant alleged, among other things, that beginning in March, 1993, O'Connell began to misrepresent to Claimant the value of his account. Claimant alleged that O'Connell made unauthorized trades in his account. Claimant alleged that O'Connell continually misrepresented the size of the losses in Claimant's account. Claimant alleged that O'Connell stated that he would "stay on the sidelines" but in fact, O'Connell traded millions of dollars in Treasury bonds in Claimant's account. Claimant alleged that large bond transactions were conducted by O'Connell in Claimant's account without authorization from Claimant. Claimant alleged that O'Connell conducted a pattern of reckless and excessive trading in treasury bonds on margin for no purpose other than to generate commissions for Respondents. Claimant alleged that MLPFS failed to properly supervise the activities of O'Connell and failed to properly supervise Claimant's account. Claimant alleged that Respondents violated the rules of the New York Stock Exchange and the National Association of Securities Dealers. Claimant alleged that Respondents violated both state and federal securities laws. Claimant alleged common law fraud, breach of fiduciary duty and breach of contract.

Respondents denied each and every allegation of wrongdoing asserted by Claimant. Respondents maintained, among other things, that Claimant authorized all trades in his account and that Claimant, an experienced investor, had full and complete control over his account. Respondents maintained that all transactions effectuated in Claimant's account were unsolicited. Respondents maintained that Claimant decided at the very outset to trade large blocks of Treasury bonds. Respondents maintained that O'Connell functioned as an order taker. Respondents maintained that O'Connell kept Claimant fully informed of Claimant's positions in his account and that they spoke with one another 4 or 5 times a day. Respondents maintained that O'Connell kept Claimant fully apprised of the positions and losses in Claimant's account. Respondents maintained that when the market moved against Claimant's large Treasury bond positions, Claimant ordered O'Connell to bust the trades. Respondents maintained that O'Connell told Claimant that since the Treasury bonds were authorized the trades could not be busted. O'Connell maintained that he never admitted to any wrongdoing. Respondents maintained that Claimant threatened O'Connell and pressured O'Connell into sending two faxes without obtaining the branch managers approval. Respondents maintained that Claimant assumes the risks of the market fluctuations; that Claimant's losses were not caused by any acts or

omissions by Respondents; and, that the losses were due solely because of the actions of Claimant.

RELIEF REQUESTED

Claimant requested damages against Respondents jointly and severally in the amount of \$700,000; punitive damages; reasonable attorney's fees and costs; interest; and costs and disbursement.

Respondents requested that Claimant's claim be dismissed and that all costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claim is denied in its entirety, including Claimant's claim for punitive damages.
2. That all parties shall bear their respective costs and attorney's fees, except for as provided for herein.

FORUM FEES

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

8 sessions X \$1000 = \$8,000 in hearing session fees assessed

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Page 4.

Forum Fees Assessed Against: equally between Claimant and Respondents. Claimant is assessed forum fees in the amount of \$4,000, however, Claimant is entitled to offset this amount with his hearing session deposit of \$1,000 plus with his filing fee overpayment of \$250 so that the amount due from the Claimant is \$2,750. Respondents MLPFS and O'Connell are jointly and severally assessed forum fees in the amount of \$4,000.


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

ARBITRATION PANEL

George R. Freund	-	Public Chairman
Harry Weiss	-	Public Panelist
Robert Ira Rabinowitz, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

Name

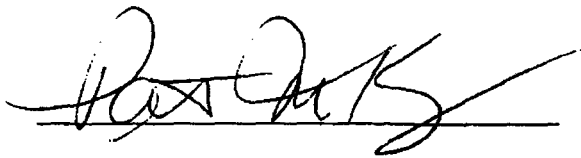

Robert Ira Rabinowitz, Esq.

NASD Date of Decision: October 13, 1994

STATE OF: NEW JERSEY
COUNTY OF: MONMOUTH

S.S.:

On this 11th day of October, 1994, before me personally appeared **Robert Ira Robinowitz, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

A handwritten signature in dark ink, appearing to read 'Patricia M. Kenny', is written over a horizontal line.

PATRICIA M. KENNY
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 15, 1996

Dussich Award
Case No. 93-02301
Page 4.

Forum Fees Assessed Against: equally between Claimant and Respondents. Claimant is assessed forum fees in the amount of \$4,000, however, Claimant is entitled to offset this amount with his hearing session deposit of \$1,000 plus with his filing fee overpayment of \$250 so that the amount due from the Claimant is \$2,750. Respondents MLPFS and O'Connell are jointly and severally assessed forum fees in the amount of \$4,000.


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

ARBITRATION PANEL

George R. Freund	-	Public Chairman
Harry Weiss	-	Public Panelist
Robert Ira Rabinowitz, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

Name


George R. Freund

NASD Date of Decision: October 13, 1994

STATE OF: *New Jersey*
COUNTY OF: *Union*

S.S.:

On this *11TH* day of *October*, 1994, before me personally appeared **George R. Freund** 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.

Diana M. Pallante

DIANA M. PALLANTE
NOTARY PUBLIC - NEW JERSEY
My Commission Expires Mar. 17, 2007

Dussich Award
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Page 4.

Forum Fees Assessed Against: equally between Claimant and Respondents. Claimant is assessed forum fees in the amount of \$4,000, however, Claimant is entitled to offset this amount with his hearing session deposit of \$1,000 plus with his filing fee overpayment of \$250 so that the amount due from the Claimant is \$2,750. Respondents MLPFS and O'Connell are jointly and severally assessed forum fees in the amount of \$4,000.

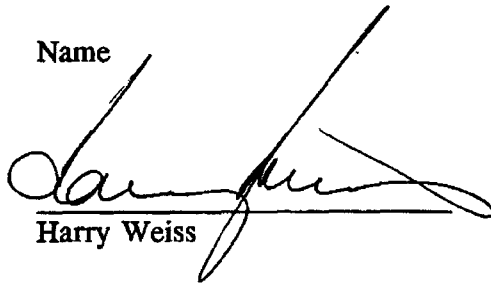
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

George R. Freund	-	Public Chairman
Harry Weiss	-	Public Panelist
Robert Ira Rabinowitz, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

Name

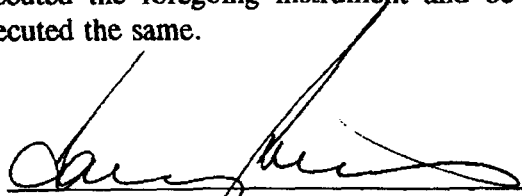


Harry Weiss

NASD Date of Decision: October 13, 1994

STATE OF: *NEW YORK*
COUNTY OF: *WESTCHESTER*

S.S.:

On this *11th* day of *October*, 1994, before me personally appeared **Harry Weiss** 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.

CAROL WEISS
Notary Public, State of New York
No. 8007069
Qualified in Westchester County
Commission Expires Jan. 19, 19*95*