

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Wiley M. Mangum Jr. and F. Christina Mangum

93-02393

Name of Respondents

Whale Securities Co., L.P.
Jack Joseph Illare, III

REPRESENTATION

Claimants Wiley M. Mangum, Jr. and F. Christina Mangum appeared pro se.

For Respondents Whale Securities Co., L.P. ("Whale") and Jack Joseph Illare, III ("Illare") appeared David S. Richan, Esq. of Tenzer, Greenblatt, Fallon & Kaplan, New York, NY.

CASE INFORMATION

The Statement of Claim was filed on June 17, 1993 and Claimants' Submission Agreement signed on June 11, 1993.

A Joint Statement of Answer was filed by Respondents on October 5, 1993. Respondent Whale Securities Co., Inc.'s Submission Agreement signed by Nicholas C. Anari, Treasurer, on behalf of Whale Securities Co., L.P. was executed on October 5, 1993. Respondent Jack Joseph Illare, III's Submission Agreement was executed on October 5, 1993.

HEARING INFORMATION

Hearing Date/Sessions: June 27, 1994 - 2 Sessions

The hearing was held at the National Association of Securities Dealers, Inc. offices located in New York City, New York.

CASE SUMMARY

Claimants alleged that in January and September of 1990, the claimants invested \$4,050.00 and \$20,000.00, respectively, with Whale Securities Co. for a total of \$24,050.00; that Respondent Illare was to be the portfolio manager who would buy and sell stocks on all stock exchanges; and that if a stock dropped quickly, Respondent Illare was to sell it even without claimant's consent.

Claimants further alleged that after initial gains occurred in their accounts, the value dropped in the joint account from \$20,000.00 to \$7,507.76, and in the individual account from \$4,052.00 to \$505.59, for a total remaining value of \$8,013.35; that Claimants requested that Respondent Illare immediately sell all CMS/ DATA stock in which they were heavily invested; and that one week after the sell order was placed, Respondent Illare telephoned claimants to advise them that he had not sold the CMS/DATA stock.

Further, Claimants alleged that Respondent Illare was negligent in handling their accounts; that Respondent Whale Securities Co., L.P. was negligent in their supervision of Illare; and that Whale was negligent in monitoring Respondent Illare's responsibility of protecting his clients' resources.

Respondents denied all allegations of wrongdoing asserted in the statement of claim. Respondents maintained that Claimant Dr. Wiley Mangum is a sophisticated investor; that Dr. Mangum has been for many years a full time business professor; and that Dr. Mangum on numerous occasions, boasted to his students that he was one of the original "players" in the stock market and had pioneered trading in short positions. Prior to opening his accounts at Whale, Dr. Mangum allegedly had trading accounts at other brokerage firms in which he traded speculatively and risky securities. Further, Respondents maintained that every transaction in claimants accounts were fully authorized; that Respondent Illare discussed every recommendation he made with Dr. Mangum prior to any such transactions; and that Respondent Illare always executed Claimant's orders promptly.

In addition, Respondents maintained that Respondent Illare was properly trained and at all times appropriately supervised by Whale's management; that Illare and Whale never misrepresented or omitted to state any material facts regarding the securities in claimants' accounts; and that on April 13, 1993, claimants transferred securities out of their Whale's accounts.

RELIEF REQUESTED

Claimants requested an award in their favor in the amount of \$19,803.74, plus costs of \$2,500.00, for a total of \$22,303.74. Claimants amended their request on April 8, 1994, and requested an award in their favor in the amount of \$22,157.97 plus a refund of expenses and time spent in pursuing this redress in

the amount of \$3,906.00 for a total of \$26,063.97. Respondents Whale and Illare requested that the claimants' statement of claim be dismissed, and that they be awarded representation fees in connection with this arbitration matter.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive a conformed copy of the Award while the original remains 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. All claims against Respondents Whale Securities Co., L.P. and Jack J. Illare, Jr. be and hereby are denied.
2. Each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrator has determined that the following Forum Fees are assessed:

2 sessions X \$300 = \$600 minus hearing session deposit of 300 = net \$300.00 due.

Claimants be and hereby are liable and shall pay to the NASD the sum of \$300.00 representing outstanding forum fees.

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

Arbitrator's Signature
Name

Virginia M. Handal
Virginia M. Handal, Esq.
Chairperson - Public Arbitrator

Date of Decision: August 30, 1994

STATE OF New York

COUNTY OF New York

On this 16 day of August, 1994, before me personally appeared Virginia Stada known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Deborah DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County 96
Commission Expires January 24, 19