

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William Wallace, III

Case No.
93-02422

v.

Name of Respondent

Advanced Equity Group, Inc.
Nathan B. Batalion
Rand M. Cohen
AE Holding Corp.
Alan Tokayer
Barry Woloshin

REPRESENTATION

For Claimant William Wallace, III ("Wallace") appeared Sharon Carlstadt of the law firm Reid & Priest located in New York, New York.

For Respondent Barry Woloshin ("Woloshin") appeared William Greenawalt, Esq. of the firm Loselle Greenawalt Kaplan Blair & Adler, located in New York, New York.

Respondent Rand Matthew Cohen ("Cohen") appeared pro se.

Alan Tokayer, Advanced Equity Grup, Inc. and A.E. Holding Corp. did not appear.

CASE INFORMATION

Statement of Claim filed on: June 17, 1993

Claimant's Submission Agreement signed on: June 15, 1993

Amended Statement of Claim filed on: September 14, 1993

Statement of Answer filed by Respondent Barry Woloshin on: March 27, 1995

No Submission Agreement was received from Respondent Barry Woloshin

Statement of Answer filed by Respondent Cohen on: September 9, 1993

Respondent Cohen's Submission Agreement signed on: September 23, 1993

Statement of Answer filed by Respondent Batalion on: September 29, 1993

Respondent Batalion's Submission Agreement signed on: September 29, 1993

No Statement of Answer or Submission Agreement was received from Respondents Advanced Equities Group, Inc. ("AEG"), Alan Tokayer ("Tokayer") or AE Holding Corp. ("AEH").

HEARING INFORMATION

Pre-Hearing Conferences:	April 11, 1994	-	1 session
	June 13, 1995	-	1 session
Hearing Dates/Sessions:	April 12, 1994	-	2 sessions
	April 13, 1994	-	1 session
	June 15, 1995	-	3 sessions
	June 16, 1995	-	1 session
	June 30, 1995	-	2 sessions
	August 28, 1995	-	2 sessions
	August 29, 1995	-	1 session

The hearings took place at the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant Wallace alleges that during January 1993, Claimant purchased 10,000 shares of Visual Cybernetics Corp. ("Visual") at 4 and another 10,000 shares of Visual at 4 1/2. Claimant asserts that on February 9, 1993, Respondent Cohen called Wallace to inform him that the investment was doing well and that he had another opportunity for Wallace to make a profit. Wallace alleges that Cohen stated Big Boy of the Pacific ("Big Boy") was about to be taken over which would result in a significant price increase and suggested the purchase of 50,000 shares at 2 3/32. Wallace alleges he told Cohen that he could not afford such an investment, but that he could borrow \$30,000 from his home equity account to purchase a lesser amount. On February 10, 1993, Wallace alleges he sent Cohen \$30,000 for the purchase of Big Boy and never received a confirmation.

Wallace further asserts that in early March, he received a statement indicating the sale of 14,300 shares of Visual for \$75,554.02 without his authorization and an unauthorized application of the proceeds to purchase approximately 36,000 more shares of Big Boy at 2 3/32. Wallace asserts that when Cohen was confronted about the unauthorized trading, Cohen responded that Wallace had already made a profit in Visual and that Big Boy would do better. At the end of March, Wallace claims he received a phone call from Cohen who told Wallace that the account was doing well with Big Boy trading at 4 and Visual at 7 3/4, thereby leading Claimant to believe his account contained assets totaling \$ 244,000.00. Wallace further asserts that Cohen guaranteed a profit of two points if Wallace invested more funds for the purchase of Visual at 7 3/4. Thereafter, Wallace purchased an additional 3000 shares at 7 3/4 for \$23,265.00 through Cohen.

Wallace asserts that in early April, he received a statement from AEG, learning for the first time that Big Boy had been reverse split 1/2.5, so that Wallace owned 20,000 shares of Big Boy, not 50,000 shares. Wallace asserts that the Cohen's earlier representation of Big Boy's trading price of 4 led Wallace to

understand he owned \$200,000.00 worth of Big Boy, when he actually only owned \$80,000.00 worth. Upon receipt of his April statement, Wallace asserts no trading price for either Big Boy or Visual was listed thereon. Wallace has subsequently learned Big Boy is in bankruptcy. Wallace asserts that as a result of the collective action of the Respondents, he lost most of his \$140,000 investment.

Claimant Wallace asserts the foregoing, on Cohen's behalf constitutes a violation of section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, a breach of fiduciary duty, misrepresentation, unsuitability and violation of the "Know Your Customer" rule. Wallace further asserts Respondents AEG, AE, Tokayer, Woloshin, and Batalion, as control persons under section 20(a) of the Act, are also liable for violation of section 10(b) and Rule 10b-5 of the Act and are directly liable for breach of fiduciary duty, misrepresentation and failure to supervise.

Respondent Cohen maintains he met Wallace as a result of a phone call during which Wallace indicated that he was or has been in the market and sought growth. Cohen further asserts that in each instance, Wallace specifically authorized the trade and that recommendations were based on information from AEG reasonably believed to be true. As affirmative defenses, Cohen claims the losses were due to persons or entities other than Cohen or market conditions over which Cohen had no control; that Wallace had full knowledge of the risks attendant to such trading; that Wallace is estopped from complaining about transactions which he was fully aware and of which he never complained; that the claims are barred by waiver, ratification and estoppel; that the losses are a result of Claimant's negligent conduct; that Claimant failed to mitigate damages.

Respondent Batalion maintains he had no controlling authority as his ownership interest in AEG was sold in 1992. Batalion asserts that although he retained the title of President for temporary purposes of continuity for the sale, he had no controlling authority and was not a supervisor of Cohen while employed in 1993. Batalion further denies he was aware of, or partook in, the interactions; denies that he was a control person, is responsible under respondeat superior or failed to supervise.

Respondent Woloshin maintains he denies information or belief sufficient to form a belief as to the truth or falsity of many of Wallace's assertions. Further, Woloshin maintains he was under no duty to supervise Respondent Cohen and that he was prohibited by the NASD from any supervisory role at AEG. As affirmative defenses, Woloshin maintains the Statement of Claim fails to state a cause of action upon which relief may be granted; that the NASD lacks jurisdiction over Woloshin as an agreement to arbitrate was never signed; that Claimant failed to mitigate his damages; that Claimant is barred by the applicable statute of limitations; that Woloshin was never informed of any complaints thereby estopping Claimant from making such claims; that any losses by Claimant were caused by his own conduct; that Claimant was fully informed of all risks associated with his investments; that Woloshin cannot be found liable because, by NASD edict, he was prevented from asserting any day-to-day (or other) oversight or supervision of AEG's practices.

RELIEF REQUESTED

Claimant requests restoration of the principal of Claimant's account and punitive damages in accordance with proof at the hearing.

Respondent Cohen requests that the Statement of Claim be dismissed in its entirety. Alternatively, Respondent Cohen requests should the panel feel compelled to award Claimant any damages, such liabilities should be assessed against AEG.

Respondent Woloshin requests that the claims be dismissed as against him and that he be granted all costs and expenses of this arbitration. Respondent Woloshin further requests such other and further relief as the panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

1. The panel granted Respondent Woloshin's Motion to Dismiss on August 29, 1995.
2. Respondent Batalion was dismissed as a party by the Claimant prior to the hearing.
3. The panel proceeded with the hearing pursuant to Sections 26 and 29 of the Code of Arbitration Procedure with respect to Respondents Alan Tokayer, AEG and AEH.

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 Rand Cohen is liable to Claimant in the amount of **TWO THOUSAND EIGHT HUNDRED SEVENTY SIX DOLLARS and TEN CENTS (\$2,876.10)**
2. Respondents Alan Tokayer, A.E. Holding Corporation and Advanced Equities Group, Inc. are jointly and severally liable to Claimant in the amount of **NINETY SEVEN THOUSAND NINE HUNDRED TWENTY SIX DOLLARS and FIFTY CENTS (\$97,926.50)**, plus interest from April 1, 1993 to present.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees have been assessed:

Non-refundable filing fee:	\$ 200.00
Hearing Sessions (12 @ \$750 per session):	\$9000.00
Pre-hearing conferences (2 @ \$300 per session):	<u>\$ 600.00</u>
Total Fees:	\$9800.00

1. Claimant paid \$950.00 and owes nothing.
2. Respondent Cohen owes \$4,425.00 to the NASD.
3. Respondents Advanced Equity Group, Inc., AE Holding Corp., and Alan Tokayer, jointly and severally owe \$4,425.00 to the NASD.

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

I, Robert D. Herschman, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Concurring Arbitrator's Signature
Name

Robert D. Herschman
Robert D. Herschman, Esq.

Public/Industry

Publ.

NASD Date of Decision: October 23, 1995

I, Charles Sidney Lester, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Concurring Arbitrator's Signature
Name

Public/Industry


Charles S. Lester, Esq.

10/13/95

NASD Date of Decision October 23, 1995

I, JEROME H. LEVY, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Concurring Arbitrator's Signature
Name

~~Date~~/Industry


Jerome H. Levy

NASD Date of Decision October 23, 1995