

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Eric Wallenstein

93-03175

Name of Respondent(s)

Suppes Securities, Inc.
First Madison Securities, Inc.

REPRESENTATION

For Claimant: Jeffrey Richards, Esq., New York, NY.

For Respondent Suppes Securities, Inc.: Edward F. Duffy, Esq., New York, NY.

For Respondent First Madison Securities, Inc.: Robert F. Bond, Esq.

CASE INFORMATION

Statement of Claim filed: August 12, 1993.

Claimant's Submission Agreement signed on: July 29, 1993.

Statement of Answer filed by Respondent, Suppes Securities, Inc. on: October 8, 1993.

Respondent, Suppes Securities, Inc.'s Submission Agreement signed on: October 8, 1993.

Statement of Answer filed by Respondent, First Madison Securities, Inc. on: September 23, 1993.

Respondent, First Madison Securities Inc.'s Submission Agreement signed on: September 23, 1993.

HEARING INFORMATION

Pre-Hearing Conference: March 22, 1994 / One Session

Hearing Dates/Sessions: March 23, 1994 / Two Sessions
 April 26, 1994 / Two Sessions
 May 19, 1994 / Two Sessions

Hearing Location: NASD Offices located in New York City, NY.

CASE SUMMARY

Claimant alleged that Respondents Suppes Securities, Inc. ("Suppes") and First Madison, Inc. ("First Madison") engaged in the illegal solicitation of securities through Stephen Fiume who held himself out as a registered representative and employee of Respondents.

Claimant, alleged that on or about September 1, 1992 Claimant was approached by Stephen Fiume ("Fiume") who presented himself as a stockbroker and representative of Suppes. Claimant next alleged that he engaged in numerous stock transactions with Mr. Fiume acting as his broker, first with Suppes and later with First Madison. Claimant then alleged that in November of 1992 he learned that Mr. Fiume was not registered to sell securities nor licensed as a stockbroker. Claimant further alleged that the broker actually handling his accounts with Suppes and First Madison was Craig Medoff ("Medoff") and not Fiume.

Claimant further alleged that when making transactions in his account he relied upon Fiume's advice and that he reasonably believed Fiume's representation that Fiume was a registered representative of, and sponsored by Respondents Suppes and First Madison.

Claimant further alleged that in December of 1992 he confronted Medoff about his accounts and that Medoff undertook to reimburse Claimant. Claimant then alleged that Medoff made two \$3,000 payments to Claimant, one in February 1993 and one in May 1993.

Claimant further alleged that Respondents Suppes and First Madison unfairly marked up the prices of securities purchased by Claimant.

Respondent Suppes maintained that it never engaged in the illegal solicitation of securities and that Stephen Fiume had never been employed, or utilized in any capacity by Suppes. Respondent Suppes further maintained that it had no direct knowledge of the existence, whereabouts or activities of Fiume. Respondent Suppes also maintained that it did not become aware of Fiume until July of 1993 as a result of a letter written to Suppes by Claimant.

In addition, Respondent Suppes maintained that account statements for Claimant's account showed that Claimant's account was serviced initially by Brian McGowan ("McGowan") and then later by Robert Lonzar ("Lonzar") both registered representatives of Suppes. Respondent Suppes further maintained that Lonzar assumed responsibility for Claimant's account after McGowan and Medoff, an employee and later a registered representative of Suppes who worked with McGowan, left the employ of Suppes.

Respondent Suppes further maintained that Fiume never acted as Claimant's stockbroker with Suppes and that all transactions in Claimant's account were handled by either McGowan or Lonzar. Respondent Suppes further maintained that Fiume was never sponsored by Suppes and that Fiume was never employed by Suppes.

Respondent Suppes maintained that there were no unfair markups taken by Suppes.

Respondent Suppes asserted as a defense that Fiume was not an employee, agent, registered representative or principal of Suppes and that Suppes took no action which would invest Fiume with any indicia of a relationship with Suppes. Suppes further asserted that no third parties were provided with authorization or power to provide Fiume with any indicia of a relationship with Suppes. Respondent further asserted that it was not aware of Fiume until Suppes received a letter from Claimant dated July 1993.

Respondent Suppes further asserted that any damages awarded should be limited only to those damages sustained by Claimant, if any, up to Claimant's discovery of Medoff's handling of Claimant's account in November 1992.

Respondent Suppes further asserted that in the event Claimant is awarded damages that any liability for damages should rest with McGowan and Medoff whose actions were outside the scope of their engagement with Suppes.

Respondent First Madison maintained that Claimant opened an account with First Madison in November 1992, and that the account showed a net profit as a result of trading activity in the account. Respondent First Madison further maintained that Medoff was a registered representative with First Madison during the period in question.

Respondent First Madison maintained that the agency commissions of two percent (2%) charged for transactions in Claimant's account did not constitute an excessive markup.

Respondent First Madison maintained that it had no knowledge of payments made by Medoff to Claimant and that Fiume was never associated with First Madison

in any capacity. Respondent First Madison further maintained that Claimant suffered no economic harm as a result of transactions with First Madison and that First Madison did not commit any misconduct in its dealings with Claimant.

RELIEF REQUESTED

Claimants requested: \$41,000 for loss of investment on transactions with Fiume, plus \$120,000 in punitive damages, and \$10,000 for interest, fees and expenses, for a total amount of \$171,000.

Respondent Suppes requested: The amount of damages awarded, if any, be limited to \$2,211.13 which represents the decrease in market value of securities in Claimants account with Suppes for the period ending November 1992. Suppes further requested that it not be held liable for any damages awarded Claimant and that no punitive damages or fees be awarded Claimant.

Respondent First Madison requested that Claimant's claim be denied as against First Madison.

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:

Respondent Suppes is hereby found liable to Claimant for the amount of \$15,939.00 plus interest in the amount of \$1,374.69. All claims against Respondent First Madison are dismissed. All parties shall bear their respective costs including attorneys' fees.

The Claimant's request for punitive damages is denied.

OTHER COSTS

Claimant is hereby assessed \$9.00 for copies made at the NASD during the hearings.

Respondent Suppes is hereby assessed \$45.00 for copies of hearing tapes.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed. Forum fees are assessed equally between Claimant

and Respondent Suppes.

1 prehearing session X \$300 = \$300.

6 sessions X \$750 = \$4,500 minus Claimant's hearing session deposit of \$750
= net \$4,050 due.

Forum fees Assessed Against:

1. Claimant is assessed \$2,400 which represents one-half of the balance of the forum fees assessed less the hearing session deposit paid of \$750 plus \$9.00 for copying leaving a balance due of \$1,659. Claimants are hereby liable and shall pay to the NASD the sum of \$1,659.
2. Respondent Suppes is assessed \$2,400 which represents one-half of the balance of the forum fees assessed plus \$45 for copies of hearing tapes for a balance due \$2,445. Respondent Suppes is hereby liable and shall pay to the NASD the sum of \$2,445.
3. Respondent Suppes was assessed a postponement fee of \$750 which was paid to the NASD.
4. No forum fees were assessed against Respondent First Madison.

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

Concurring Arbitrators' Signatures

Name

Public Chairman

Robert D. Herschman, Esq.

Name

Industry Panelist

James J. Noone

Name

Public Panelist

Marilyn J. Salzman, Esq.

Date of Decision: 8/23/94