

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

---

**In the Matter of the Arbitration Between**

**Name of Claimants**

Clinton B. and Anita Clark

93-04054

**Name of Respondents**

The Chicago Corporation and  
William P. Dugan

---

**Representation of Parties**

Claimants, Clinton B. and Anita Clark ("Claimants") were represented at the hearing by Peter J. Berman, Esq. of Peter J. Berman, Ltd., Chicago, Illinois.

Respondent, The Chicago Corporation ("TCC") was represented by Hal Morris, Esq. of Arnstein & Lehr, Chicago, Illinois.

Respondent, William P. Dugan ("Dugan") was represented at the hearing by Thomas P. Ward, Esq. of McBride Baker & Coles, Chicago, Illinois.

**Case Information**

The Statement of Claim was filed on or about October 1, 1993. The Uniform Submission Agreement was signed on September 30, 1993.

The Statement of Answer by TCC was filed on or about December 20, 1993. The Uniform Submission Agreement was signed on December 13, 1993.

The Statement of Answer by Dugan was filed on December 14, 1993. The Uniform Submission Agreement was signed on October 18, 1993.

**Hearing Information**

A prehearing conference was held on September 27, 1994 for one (1) session.

The hearing was held on February 22, 1995 for two (2) sessions, February 23, 1995 for two (2)

sessions, February 24, 1995 for two (2) sessions, March 14, 1995 for two (2) sessions, March 16, 1995 for two (2) sessions, April 18, 1995 for two (2) sessions, and May 15, 1995 for two (2) sessions, in Chicago, Illinois, for a total of fourteen (14) hearing sessions.

### **Case Summary**

Claimants alleged in their Statement of Claim that respondents TCC and Dugan intentionally and wilfully made speculative trades that were unsuitable for claimants needs and objectives as retirees; failed to advise the claimants that they intended to trade on margin; failed to advise the claimants that the risks of trading on margin are substantial; deceived the claimants about the nature of their account and the positions that were established in their account; and made unauthorized trades in their account.

Claimants alleged that respondents violated Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission; the Illinois Consumer Fraud and Deceptive Business Practices Act; NASD rules; NYSE rules; common law fraud; and common law breach of fiduciary duty.

Respondent TCC generally denied the allegations in their answer to the claim. TCC further alleged that all trades were acknowledged by claimants and that the claimants were aware of the risks of trading on margin.

Respondent Dugan generally denied the allegations in his answer to the claim.

### **Relief Requested**

Claimants requested compensatory damages in the amount of \$726,263.12 with interest at the rate of five percent per annum from July 7, 1993 until the date an award is entered, punitive damages in the amount of \$1,000,000 with the costs of this proceeding.

Respondent TCC requested that the claim be dismissed and that they be awarded their costs and attorney's fees.

Respondent Dugan requested that the claim be dismissed.

### **Other Issues Considered and Decided**

The parties present at the hearing have agreed that the Award in this matter may be executed by 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.

### **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. Respondents, The Chicago Corporation and William Dugan, shall be and hereby are jointly and severally liable for Counts 3,4, and 6 as set forth in the Statement of Claim, and shall pay to the claimants, damages in the amount of Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00);
2. Respondents, The Chicago Corporation and William Dugan, are not liable for counts 1,2, and 5;
3. Claimants' request for interest is denied;
4. Claimants' request for legal fees are denied;
5. Claimants' request for punitive damages are denied;
6. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated herein.

### **Forum Fees**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

14 hearing sessions X \$1000 = \$14,000 minus \$1000 hearing session deposit = \$13,000 plus \$300 for the one (1) prehearing conference = net \$13,300 due to the NASD.

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$250, and shall retain the hearing session deposit in the amount of \$1000 previously paid to the NASD by the Claimants.

The additional forum fees in the amount of \$13,300 are assessed against Respondents, jointly and severally. The additional forum fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

**By The Arbitration Panel:**

Dated:

June 30, 1995

/s/ Michael G. Berland, Esq.  
Michael G. Berland, Esq.  
Presiding, Public Arbitrator

June 21, 1995

/s/ Mark Miller, Esq.  
Mark Miller, Esq.  
Public Arbitrator

June 13, 1995

/s/ Daniel C. Kriser  
Daniel C. Kriser  
Industry Arbitrator

Date Award Served By The NASD: 7-5-95