

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

MICHAEL B. ROGOFF,

Claimant

v.

NASD No. 93-4233

NATIONAL FINANCIAL SERVICES CORP.,
FINANCIAL SECURITIES NETWORK, INC.,
HYANNIS TRADING ADVISORS, INC.,
JEREMIAH J. HEGARTY, MICHAEL HEGARTY
and GERALD HEGARTY,

Respondents.

Representation

For Claimant: Paul Thomas, Esq. of Law Offices of Paul Thomas, Carlsbad, California

For Respondent: Jeremiah Hegarty-pro se, Michael Hegarty-pro se, National Financial Services Corp.(NFS)-Robert Buhlman, Esq. of Bingham, Dana & Gould, Boston, Massachusetts, Financial Securities Network (FSN)-not represented, Hyannis Trading Advisors, Inc. (HTA)-Jeremiah Hegarty, Gerald Hegarty-pro se

Case Information

Statement of Claim filed: October 6, 1993

Claimant's Submission Agreement signed: February 1, 1993

Statement of Answers filed on: Jeremiah Hegarty and HTA-January 11, 1994, Michael Hegarty-January 10, 1994, NFS-January 12, 1994, FSN-none

Respondent's Submission Agreement signed on: NFS-December 7, 1993. All other respondents did not file submission agreements but, with the exception of FSN, appeared at the hearing and are subject to the jurisdiction of the NASD in accordance with Section 12 of the NASD Code of Arbitration Procedure. Gerald Hegarty refused to submit as stated in his letter of December 29, 1993, since he is not an NASD member, and was also dismissed by claimant's letter of December 30, 1993.

Hearing Information

Prehearing Conference Date(s)/Sessions: October 21, 1994/one

Hearing Date/Sessions: October 25, 1994/two, October 26, 1994/three

Hearing Location: San Diego, California

Case Summary

Claimant alleged:

Negligence, breach of NASD Rules of Fair Practice, breach of fiduciary duty, common law fraud, intentional misrepresentation, negligent misrepresentation, negligence, unsuitability, churning, unauthorized trading, Regulation T (margin) violations and failure to supervise in the purchase and sale of options.

Claimant was 50 years old and employed as a carpet salesman earning \$35,000 per year. He opened a brokerage account with respondent in October of 1992, had limited investment experience and had an investment objective to preserve capital and capital appreciation. Rogoff had no experience with options, did not understand them and did not intend to become involved in speculation. Respondents falsely represented to claimant that their recommended index option trading strategy was suitable and that if the value of his managed account declined by 30%, trading would stop and the account would be closed. Trading did not stop however until all the equity was depleted and claimant was left with a debit balance of over \$5,000.

Respondents Jeremiah Hegarty (J. Hegarty) and HTA alleged:

J. Hegarty was granted written authority by Rogoff to trade, at J. Hegarty's discretion, S & P 100 Index Options, as an advisor employed by HTA. Michael Hegarty (M. Hegarty) would be the registered representative on the account; M. Hegarty was an employee of FSN, whose accounts were cleared through NFS.

J. Hegarty discussed with Rogoff the management of the account and the risk involved in option trading, which claimant stated he understood. Claimant agreed to and signed a margin agreement and acknowledged that the funds invested did not exceed 15% of his net worth. J. Hegarty was an advisor working on a performance fee only, and so did not receive any commissions. NFS never informed J. Hegarty of a margin call on Rogoff's account.

Respondent M. Hegarty alleged:

M. Hegarty explained the risks and potential returns associated with index options and

that J. Hegarty would make the trading decisions. M. Hegarty acted as the registered representative, FSN was his employer that cleared through NFS. Claimant was advised that past performance is not necessarily indicative of future results. M. Hegarty had no responsibility to place orders and was not granted discretionary powers; his obligation was to implement the advisor's decisions. M. Hegarty was never informed of a margin call on Rogoff's account.

Respondent NFS alleged:

NFS acted only as a clearing broker for Rogoff's introducing brokerage firm, FSN, and as such, is not liable for the transactions maintained with FSN. Furthermore, NFS has never had any affiliation with J. Hegarty, M. Hegarty or HTA. NFS had no contact with claimant and had no influence on his investments. M. Hegarty was the account executive, employed by FSN. J. Hegarty was the investment advisor.

Respondent FSN did not file an Answer.

Relief Requested

Claimant requested:

1. Actual damages in excess of \$60,000;
2. Punitive damages;
3. Costs and expenses;
4. Prejudgment interest; and
5. Such further relief as deemed proper.

Other Issues Considered and 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim against respondent NFS is dismissed;

2. Respondents J. Hegarty, M. Hegarty, HTA and FSN are jointly and severally liable for and shall pay claimant the sum of \$32,000;
3. Respondents J. Hegarty, M. Hegarty, HTA and FSN are jointly and severally liable for and shall pay claimant the sum of \$6,400 in prejudgment interest;
4. Each and every other claim, including the claim for punitive damages, is dismissed;
5. The parties shall each bear their respective attorney's fees;
6. The parties shall each bear their respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall retain the \$500 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Respondents J. Hegarty, M. Hegarty, HTA and FSN, jointly and severally, for \$2,300,

calculated as follows: one prehearing sessions at \$300/prehearing session, plus five hearing sessions at \$500/hearing session, equals \$2,800.

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

Arbitration Panel

| <i>Name</i> | <i>Public/Industry</i> |
|--------------------|-------------------------------|
| Diana Davis | Public |
| Kenneth Gross | Public |
| Robert Hughes | Industry |

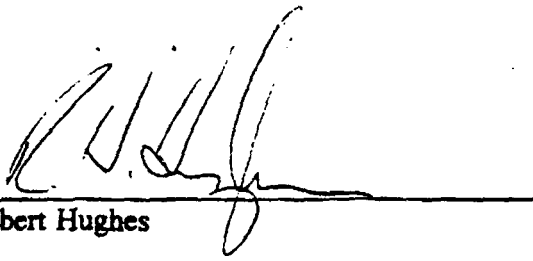
Concurring Arbitrators' Signatures



Diana Davis

Kenneth Gross

Served 11/10/94

A handwritten signature in dark ink, appearing to read 'R. Hughes', is written over a horizontal line.

Robert Hughes

Served 11/10/94

Date of Decision: .

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Other Costs

None.

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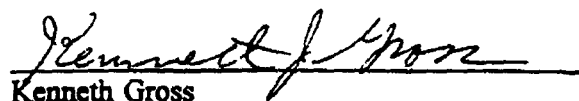
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