

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Nasser A. Almwisheer
Aziza A. Almoysheer

93-04691

Name of Respondents

Jonathan Harbach
Christopher Zelesnick

REPRESENTATION

Claimants Nasser A. Almwisheer ("Almwisheer") and Aziza A. Almoysheer ("Almoysheer") appeared at the hearing pro se.

Respondents Jonathan Harbach ("Harbach") and Christopher Zelesnick ("Zelesnick") were represented at the hearing by Joseph Cascarelli, Esq. of Philadelphia, Pennsylvania.

CASE INFORMATION

The Statement of Claim was filed with the NASD by Claimants Almwisheer and Almoysheer on November 9, 1993. The Uniform Submission Agreement was signed by Claimants on November 8, 1993.

A joint Statement of Answer was filed by Respondents Harbach and Zelesnick on March 15, 1994. A Uniform Submission Agreement was signed by Harbach on April 18, 1994. A Uniform Submission Agreement was signed by Zelesnick on April 21, 1994.

HEARING INFORMATION

The hearing was held on November 4, 1994, November 21, 1994, and January 11, 1995, at the NASD District Office in Philadelphia, Pennsylvania for a total of five (5) hearing sessions.

CASE SUMMARY

Claimants Nasser A. Almwisheer and Aziza A. Almoysheer stated in their Statement of Claim that during 1992 and 1993, Respondent Harbach was a registered representative assigned to their account, and Respondent Zelesnick was Harbach's branch office manager. Claimants also stated that their stated investment objective was long term growth. Claimants alleged that Harbach made misrepresentations and omissions of material facts relating to investments in Laserscope, Cirrus Logic ("CRUS"), and SLM International ("SLMI"), which were made by the Claimants based upon Harbach's recommendations. Claimants alleged that they subsequently learned that Respondent Harbach's recommendations were made contrary to research reports issued by his firm, Standard & Poors, and Value Line.

Claimants alleged that due to a sudden decline in the price of CRUS, they received several margin calls in March, April and May of 1993, and as a result had to liquidate shares of Marvel Entertainment ("MRV"), Thompson Opportunity Fund B, Berger 100 Fund, and Vista Capital Growth Fund at a loss. Claimants additionally alleged that Harbach liquidated their investment in Laserscope to meet a margin call at a loss, and without authorization.

Claimants alleged that Respondent Zelesnick was aware that their account was highly margined, and that Zelesnick explained to them that the price of CRUS stock decreased because it was a volatile stock. Claimants also alleged that Respondent Zelesnick failed to properly supervise Harbach.

Respondents in their joint Answer stated that Claimants aggressively entered into a steady stream of short term transactions in growth stocks in a margin account. Respondents assert that Claimants had sufficient information from their own research and that which was provided by their broker to make informed decisions. Respondents asserted that: Claimants' investment objective was short term growth; that Claimants acted against the advice of their brokers and sold every stock purchased almost immediately after purchase in order to obtain a quick profit or to prevent greater loss; and that Claimants' used their own independent, well-informed judgement, in deciding to purchase Laserscope stock. Respondents claim that they sent Mr. Almwisheer a Mailgram in advance of the liquidation of the Laserscope stock and made repeated attempts to notify him of the margin call by telephone. Respondents also asserted Mr. Zelesnick acted properly in liquidating the Laserscope stock to meet the margin call.

Respondents set forth the following affirmative defenses in their Answer: failure to state a claim upon which relief may be granted; the Claimants' claims are barred by the doctrines of ratification and waiver, the statute of frauds, contributory negligence, want or failure of consideration, and by the applicable statutes of limitations; Claimants failed to mitigate their damages; Respondents' obligations if any, to the Claimants have been fully paid, satisfied and discharged; Claimants assumed the risk

of the transactions engaged in and the investment losses that were incurred; economic, industry, corporate and market conditions, and not Respondents, were responsible for Claimants' losses; Claimants may not recover punitive or exemplary damages under applicable state laws; Respondents acted in good faith and did not induce Claimants' investments.

RELIEF REQUESTED

Claimants requested damages in the amount of \$66,260.35.

Respondents requested in their Answer that the Panel reject all of the Claimants' claims.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by counterpart copies. The parties have also 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. Respondent, Christopher Zelesnick, shall be liable for, and shall pay to Claimants, Nasser A. Almwisheer and Aziza A. Almoyseer, the sum of Fourteen Hundred Dollars and No Cents, (\$1,400.00), inclusive of interest.
2. All other claims or counterclaims, if any, are denied.
3. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.
4. Any relief not specifically provided for herein is denied.

FORUM FEES

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

5 hearing sessions x \$500 = \$2,500.

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$150, and the hearing session deposit in the amount of

\$500 previously paid to the NASD by Claimants.

The panel has ordered that the Claimants pay additional forum fees to the NASD in the amount of \$334, that Respondent Harbach pay \$833, and that Respondent Zelesnick pay \$833 to the NASD.

pay \$334

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

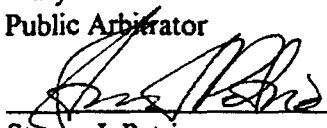
By The Arbitration Panel:

Dated:

John J. Jordan, Esq., Presiding
Public Arbitrator

Mary W. Kahn
Public Arbitrator

2/21/95



Steven J. Petrie
Industry Arbitrator

Date Award Served By the NASD: February 28, 1995

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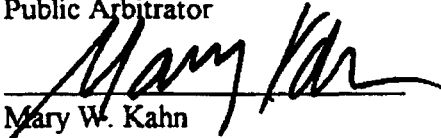
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By The Arbitration Panel:

Dated:

2-21-95

John J. Jordan, Esq., Presiding
Public Arbitrator



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By The Arbitration Panel:

Dated:

2/14/95



John J. Jordan, Esq., Presiding
Public Arbitrator

Mary W. Kahn
Public Arbitrator

Steven J. Petrie
Industry Arbitrator

Date Award Served By the NASD: February 28, 1995

