

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Edilio Gennari; Federico Gennari;
and Irene Gennari

93-05096

Name of Respondent

Comerica Investment Service, Inc.

REPRESENTATION

For Claimants: Claimants Edilio Gennari, Federico Gennari and Irene Gennari were represented by John F. Chambers, Esq. of Chambers Steiner Mazur Ornstein & Amlin, located in Detroit, Michigan.

For Respondent: Comerica Investment Service, Inc. was represented by David G. Rea, Esq. of Bodman Longley & Dahling, located in Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed: December 10, 1993

Claimants' Submission Agreement signed on: January 12, 1994.

Statement of Answer and Counterclaim filed by Respondent on: March 21, 1994.

Respondent's Submission Agreement signed on: March 18, 1994 by Carole A. Collier, Operations Manager, Comerica Investment Service, Inc.

Claimants' Answer to Counterclaim filed: November 10, 1994.

First Amended Answer and Counterclaim filed: November 25, 1994.

Motion to Bar Claimants from Presenting Any Matter, Arguments or Defenses to Respondent's Counterclaim filed: November 14, 1994.

Motion to Dismiss filed by Respondent on: November 14, 1994.

Answer to Motion to Dismiss filed by Claimants on: November 10, 1994.

Respondent's Reply to the Answer to Motion to Dismiss filed: November 22, 1994.

HEARING INFORMATION

Pre-Hearing Conference: None Held.
Hearing Dates/Sessions: December 8, 1994 for Two (2) sessions;
December 9, 1992 for Two (2) sessions.

Hearing Location: Southfield, Michigan

CASE SUMMARY

Claimants alleged that Respondent Comerica allowed Claimants to pursue an investment strategy that was bound to fail and failed to properly supervise the account. Claimants specifically alleged that:

1. Edilio Gennari opened the brokerage account with Comerica in December 1982 with Federico and Irene Gennari as joint tenants. He was retired with an income of approximately \$20,000 and a personal net worth of approximately \$155,000. Mr. Gennari signed an additional option trading agreement with Comerica on November 2, 1987 which reflected that his income was \$22,000, he had moderate option trading experience and a net worth of \$155,000;
2. In February 1990, the account had total equity value of \$286,569.30. By July 1993, the account had a negative equity value of \$13,670.11;
3. Over the period of time between February 1990 and July 1993, securities valued at \$8,989,050 were sold in the account. There were hundreds of options transaction made, trading was clearly out of control and the account was falling in value; and
4. The massive losses incurred were totally disproportionate to the Claimants' net worth, income and retired status.

Based upon the above allegations, Claimants asserted claims for violation of Sections 10(6) and 20 of the Securities Exchange Act of 1934, 15 U.S.C. 78(J)(B), and 78(T)(5), 17 C.F.R. Section 240.106 promulgated thereunder, and common law negligence.

Respondent denied the material allegations of the Statement of Claim, alleging that:

1. Comerica is a discount brokerage firm that provides no investment advice to its customers and does not advise on the suitability of investments. Its role is limited to the execution of customer orders;
2. Edilio Gennari is a sophisticated investor with over 30 years of experience in trading stocks and options. Gennari terminated his account at Hutton because he no longer wished to pay for the services of a full service brokerage firm and opened his account at Comerica for the purpose of trading at lower transaction costs;
3. The documents signed by Gennari in opening the account contained several provisions advising of the risk of option contracts; that Comerica would not provide investment advice or advise with respect to the suitability of any order; that Claimants represented that they had experience in trading options and were suitable for the trading, and that "speculation" was the Claimants' investment objective;
4. Edilio Gennari exercised complete control of the account, often calling Comerica 15 times a day to monitor the account and place orders. Gennari was monitoring the movements in stock and options prices;
5. All trades were at Gennari's unsolicited request and Comerica employees did not provide advice or recommendations. Claimants never asked for advice or recommendations;
6. Gennari unilaterally chose to follow an investment strategy characterized by frequent trades and high risk investments. Gennari was aware of the risks, having experienced substantial shifts in the equity balance of the account from 1987 to 1992, and continued to invest in the same manner; and
7. Gennari elected to write numerous call options on Citicorp stock in 1992, but did not cover these options by purchasing Citicorp stock. A price movement in the underlying security triggered a margin call which Gennari could not, or would not, cover. Comerica was required to liquidate his option positions resulting in the losses complained of by Claimants.

Comerica asserted several affirmative defenses, including the following:

1. Claimants have failed to state a claim upon which relief can be granted;
2. The claimants are barred from recovery by the doctrines of waiver, estoppel, and

ratification, and by the applicable statute of limitations; and

3. Comerica did not misrepresent or fail to omit any material facts.

In addition, Comerica asserted a counterclaim for payment of the debit balance in the account.

Claimants denied owing any sums on the Counterclaim.

RELIEF REQUESTED

The Gennaris requested entry of an award against Respondent Comerica for actual damages in the sum of \$344,727.00 and dismissal of the Counterclaim.

Respondent Comerica requested entry of an award dismissing the claims against itself and for an award on its Counterclaim in the sum of \$14,545.98 in actual damages, interest, attorneys' fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the Motion to Dismiss and the Motion to Bar, as well as all responsive pleadings, the Panel determined that the Motions would be denied.

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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim filed by the Claimants is hereby dismissed and denied in its entirety;
2. The Counterclaim filed by the Respondent is hereby dismissed and denied in its entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and

4. Any relief request not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$750.00 per session = \$3,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimants, Edilio Gennari, Federico Gennari and Irene Gennari. In addition, the NASD shall retain the \$500.00 claim filing fee and the \$600.00 hearing session deposit previously Respondent Comerica Investment Service, Inc. Respondent Comerica Investment Service, Inc. is liable for and shall pay to the NASD the sum of \$1,650.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Robert J. Scafuri, Esq.
Robert J. Scafuri, Esq.
Public Arbitrator
Chairperson

May 22, 1995

/s/ Jerome D. Sobczak
Jerome D. Sobczak
Public Arbitrator

May 23, 1995

/s/ Norman A. Samson
Norman A. Samson
Industry Arbitrator

May 22, 1995

For NASD Use Only
Date of Service of Award: May 25, 1995