

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lawrence C. Hesse

94-00190

Name of Respondents

Robert W. Baird & Co., Inc.
Lewis E. Butler

REPRESENTATION

For Claimant, Lawrence C. Hess, appeared J. Scott Kramer, Esq. from the law firm of Duane, Morris & Heckscher located in Philadelphia, Pennsylvania.

For Respondents, Robert W. Baird & Co., Inc. and Lewis E. Butler, appeared Frank Taylor, Esq. from the law firm of Popham, Haik, Schnobrich & Kaufman, LTD., located in Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: January 17, 1994.

Claimant's Submission Agreement signed on: January 10, 1994.

Statement of Answer filed by Respondents on: May 17, 1994.

Respondent Robert W. Baird & Co., Inc.'s Submission Agreement signed on: August 2, 1994.

Respondent Lewis E. Butler's Submission Agreement signed on: August 9, 1994.

HEARING INFORMATION

Pre-Hearing Conference:	April 9, 1996	One Session
	April 7, 1995	One Session
Hearing Dates/Sessions:	July 11, 1996	Two Sessions
	July 10, 1996	Two Sessions
	July 09, 1996	Two Sessions

April 12, 1996 Two Sessions
April 11, 1996 Two Sessions

The hearings were conducted at the office of the National Association of Securities Dealers located in New York, New York and at the City Midday Club located in New York, New York.

CASE SUMMARY

Claimant Lawrence C. Hess ("Claimant") alleged that Respondents, Robert W. Baird & Co., Inc. ("Baird") and Lewis E. Butler ("Butler") gave him unsuitable investment advice and engaged in unauthorized trades in his account. Claimant further alleged that in or about late October or early November 1992, Butler, a representative of Baird, contacted Claimant and convinced him to open an account with Baird. Claimant contended that when he opened the account, he had little or no investment experience and that his financial objectives were to protect his principal, with a return on investment.

Claimant contended that in late November of 1992, after he had already purchased stock through Baird, he executed a customer agreement, and that prior to executing said agreement he explained to Butler that he did not understand the form. Claimant asserted that Butler replied that he should just sign the form and send it back to him. Claimant further asserted that in the late summer of 1993, he obtained a copy of the document and that the information relating to his past investment experience, investment objectives and anticipated types of options transactions had been filled in without his knowledge or permission.

Claimant further alleged that although he requested to be informed of and that he authorize all of the trading in his account, Butler exercised control of the account and purchased and/or sold various stocks without consulting Claimant. Claimant alleged that investments in the account carried out by Butler and Baird failed to conform with representations made by Butler and were unsuitable to Claimant's expressed financial objectives. Claimant contended that trading in the account was knowingly excessive and that the account was managed in a manner more conducive to generating commissions and interest income for the Respondents. Claimant contended that his accounts were traded at a turnover ratio of 53.60 from November 1992 to June 1993 and that total commissions and fees amounted to \$90,812.00 or 39.12% of the total amount invested.

Claimant alleged that he had suffered losses totalling \$233,885.92 including commissions. Claimant alleged that Baird is liable in that it failed to properly control the improper conduct of Butler and that do to the actions of the Respondents he had suffered damages for which the Respondents should be held liable.

Respondents, Baird and Hesse maintained that Claimant was a highly liquid, extraordinarily wealthy and sophisticated investor who wanted to pursue a strategy of high risk trading in an effort to generate tremendous rewards. Respondents further maintained that Claimant came to Baird because of his close friendship with Butler, and that he told Butler to find risky, though potentially lucrative, trades for Claimant to make.

Respondents maintained that Butler initially and continually recommended conservative investments for Claimant but that these recommendations were angrily rejected. Respondents further maintained that Butler refused to execute Claimant's order to purchase foreign currencies and also refused to execute several of Claimant's orders in options trading because of the risks associated with the investments.

Respondents maintained that Butler suggested that Claimant invest in equities, that Claimant told Butler to chose an equity in which to invest, and that Butler kept Claimant closely informed of what he did and how the stock was performing. Respondents further maintained that although a significant number of trades were made on Claimant's account, all of them were made at Claimant's suggestion or with his knowledge and consent. Respondents maintained that Claimant's allegation that he was never involved in the completion of the customer agreements was outright false.

Respondents further alleged that Claimant knowingly and voluntarily assumed the risk of any financial loss or injury he may have sustained, and that Butler was properly supervised and controlled by Baird. Respondents maintained that they have committed no wrongdoing and requested that the claims against them be dismissed.

RELIEF REQUESTED

Claimant Lawrence C. Hesse requested \$233,885.92 in actual damages, an award of interest on his recovery and an award for punitive damages. The Claimant further requested relief for his costs in bringing this matter to arbitration, including reasonable attorneys' fees.

Respondent Robert W. Baird & Co., Inc. and Respondent Lewis E. Butler requested that the claims of the Claimant be dismissed with prejudice. Respondents requested reimbursement of their costs and expenses incurred herein, including reasonable attorneys' fees, disbursement and expenses. Respondents also requested an award of such other relief as the arbitration panel deems just and equitable.

OTHER ISSUES CONSIDERED & 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. The claims of Claimant Lawrence C. Hesse against Respondent Robert W. Baird & Co., Inc and Respondent Lewis E. Butler are dismissed in their entirety.
2. Each party shall bear their respective costs; including attorneys' fees.
3. All other requests for relief are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$200.00 non-refundable filing fee previously deposited by Claimant Lawrence C. Hesse and have assessed the following forum fees:

Pre-hearing conference fees:	\$ 600.00 (2 sessions x \$300.00)
Hearing Sessions Fees:	\$7,500.00 (10 sessions x 750.00)

Total Forum Fees:	\$8,100.00
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Claimant, Lawrence C. Hesse, is assessed the sum of \$4050.00, representing one-half the forum fees due, less the \$750.00 previously deposited with the NASD, leaving \$3,300.00 due. Claimant is liable and shall pay to the NASD the sum of \$3,300.00.

Respondents, Robert W. Baird & Co., Inc. and Lewis E. Butler, are jointly and severally assessed the sum of \$4050.00, representing one-half the forum fees due. Respondents, Robert W. Baird & Co., Inc. and Lewis E. Butler, are jointly and severally liable and shall pay to the NASD the sum of \$4,050.00.

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

ARBITRATORS' SIGNATURES

Allen Kilib

Allen Kilib, Esq.
Public Chairperson

Steven Walsh
Industry Panelist

Richard Lerner
Public Panelist

Date of Decision: November 11, 1996

I, Allen Kilik, Esq., do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Allen Kilik
Allen Kilik, Esq.
Public Chairperson

I, Steven Walsh, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Steven Walsh
Steven Walsh
Industry Panelist

I, Richard Lerner, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Richard Lerner
Richard Lerner
Public Panelist

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Richard Lerner
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Richard E. Lerner
Richard Lerner
Public Panelist

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