

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Larry A. Berman

94-01542

Name of Respondents

James Wilson Bullard, Jr.  
Kevin Patrick Coughlin  
James W. Bullard, Jr., Inc.

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REPRESENTATION

Claimant Larry A. Berman ("Claimant") represented himself.

Respondent Kevin Patrick Coughlin ("Coughlin") was represented at the hearing by Jeffrey Plotkin, Attorney at Law, New York, New York.

Respondents James Wilson Bullard, Jr. ("James Bullard") and James W. Bullard, Jr., Inc. (the "Bullard") were not represented at the hearing.

CASE INFORMATION

Statement of Claim filed: April 22, 1994

Claimant's Submission Agreement signed on: April 21, 1994

Statement of Answer and Cross-Claim filed by Coughlin on:  
June 6, 1995

Coughlin's Submission Agreement signed on: June 5, 1995

Respondent James Bullard individually and the Bullard Firm neither answered nor appeared.

HEARING INFORMATION

Hearing Date/Sessions: August 22, 1995 - one session

Hearing Location: American Arbitration Association,  
Philadelphia, PA

**CASE SUMMARY**

Claimant alleged that Respondents failed to properly execute his orders and engaged in a series of purchases without Claimants' prior authorization. Claimant alleged that Respondents mishandled his account. Claimant alleged that Bullard failed to return his telephone calls and failed to respond to letters. Claimant alleged that Bullard offered to enter into a settlement agreement with Claimant to make up for the alleged trading losses but that the parties failed to finalize the agreement.

Coughlin denied all allegations of wrongdoing and maintained that he properly handled Claimant's account at all times. Coughlin maintained that he did not commit any unauthorized trades and that Coughlin only handled Claimant's account for a brief period of time before leaving the Bullard Firm. Coughlin maintained that he was not responsible for the losses suffered by Claimant and that if any liability were to be held against him that his cross-claim be awarded. Coughlin maintained that pursuant to his indemnification agreement with the Bullard Firm and James Bullard that he was entitled to indemnification for any liability found.

**RELIEF REQUESTED**

Claimant in his pleading sought damages totalling \$150,000 of which \$50,000 reflect his alleged trading losses. Claimant also requested that Respondents be censured or similarly sanctioned for their conduct in handling his account.

Coughlin requested that Claimant's claim be dismissed in its entirety and that he be awarded attorney's fees and costs in defending this matter. In the alternative, Coughlin requested that the Panel find in his favor and against Cross-Respondents the Bullard Firm and James Bullard on his cross-claim for indemnification and reimbursement of attorney's fees and costs in defending this matter.

**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.

Upon the completion of Claimant's presentation of evidence, Respondents asserted a Motion to Dismiss for failing to state a cause of action which motion was held in abeyance by the Panel. The Panel in its deliberations determined that it would decide this case on the merits.

The Panel concluded from the NASD's file and from the evidence provided by Respondent Coughlin's counsel that the Bullard Firm and James Bullard were properly served with the pleadings and the hearing notice. Therefore, although Respondent Bullard and the Bullard Firm did not submit an answer nor did they participate at the hearing, they are bound by the Panel's rulings below.

#### 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. That Claimant's claims against each of the named Respondents are denied in all respects.
2. That the parties shall bear their respective costs, except as forum fees are addressed herein.
3. That the parties shall bear their respective attorneys' fees, if applicable.

#### FORUM FEES

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

1 hearing session x \$750 = \$750

The Panel decided that the Forum Fee shall be borne by Claimant so that the NASD, Inc. will retain Claimant's hearing session deposit and the NASD, Inc. will return to Coughlin his hearing session deposit of \$750.

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

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Dated:

8/25/95

By the Arbitration Panel:

Barbara A. Ash  
Barbara A. Ash, Esq., Presiding  
Public Arbitrator

Roy B. Steenhoff  
Roy B. Steenhoff  
Public Arbitrator

Robina Fedora Asti  
Robina Fedora Asti  
Industry Arbitrator

Date NASD Served the Award:

August 29, 1995