

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Rod Rinker

v.

NASD Arbitration
No. 94-01554

Name of Respondent(s)

H.J. Meyers & Co., Inc.

REPRESENTATION

Claimant represented himself.

Respondent: Robert A. Uhl, Esq.,
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: April 22, 1994

Claimant's Submission Agreement signed: April 1, 1994

Statement of Answer filed: June 27, 1994

Respondent's Submission Agreement signed: June 6, 1994

HEARING INFORMATION

Hearing Dates/Sessions: April 17, 1995 (two sessions)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged unauthorized trading, failure to execute and failure to supervise with respect to investments in common stocks and options.

Respondent denied the allegations of the claim, and responded that Claimant had complained only about unprofitable trades, and that Claimant continued to conduct business with his broker after learning of the alleged unauthorized trades. Respondent asserted that Claimant ratified all trades, that the claims were barred by Claimant's contributory fault, that Claimant's claims are barred by the doctrine of unclean hands, and that Respondent did not act with the requisite scienter.

RELIEF REQUESTED

Claimant requested compensatory damages of \$27,656.28, plus exemplary damages and costs of arbitration.

Respondent requested dismissal of all claims and an award of costs of arbitration.

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 original remains on file with the NASD.

AWARD

Claimant's damage claims are premised, in large part, upon a declaration purportedly made by Claimant's former broker who was also Respondent H.J. Meyers & Co., Inc.'s (Meyers) employee. This document contains the broker's alleged admission that he made several material misrepresentations to Claimant and acted without Claimant's authorization and/or contrary to

Claimant's expressed intentions. Unfortunately, the broker was not present at the hearing to confirm or dispute his making of the declaration nor was the document otherwise authenticated (See Cal. Civ. Code Sec. 1181, et. seq.). Neither was it established that the broker subscribed to the information contained in the document.

If treated as having been fully authenticated and reliable, the broker's declaration undeniably supports Claimant's right to redress against that declarant – but not necessarily against Meyers. It was uncontroverted that the challenged conduct objectively comported with Claimant's stated investment objectives and trading history. Moreover, Claimant admitted he and his accountant reviewed his monthly statements and trade confirmations but did not complain to anyone other than the broker until well after the alleged misconduct occurred. Lastly, Claimant evidently mistrusted his broker's oral instructions to disregard or ignore those trade confirms and monthly statements given Claimant's attempts to record his conversations with his broker.

Claimant has not fully satisfied his burden of presenting strict proof respecting his claims against Meyers. Consequently, Claimant's claims against Meyers as pled and argued in the instant matter are respectfully denied and hereby dismissed. This award adjudicates only those claims made against named Respondent Meyers.

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted against Respondent are dismissed in their entirety.
2. The parties shall each bear their respective costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$100 non-refundable filing fee paid by Claimant. Forum fees are to be split equally between the parties as follows:

Total fees:

Two hearing sessions @ \$300/session	=	\$ 600.00
Claimant's share	=	\$ 300.00
Credit for deposit	=	<u>300.00</u>
Balance due	=	\$ 0.00
Respondent's share	=	\$ 300.00

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

ARBITRATOR

Name Public / Industry

Elliott Finkel

Public Arbitrator


Elliott Finkel

Date Served: 5-23-95