

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Lee Cazort, Jr.

and

Case No. 94-01703

NAP Financial Corporation
n/k/a Aragon Financial Services, Inc.
and Marc J. Berman

REPRESENTATION OF PARTIES

Claimant, Lee Cazort, Jr., was represented by Mark W. Nichols, Esq. of Nichols, Wolff & Ledbetter, Little Rock, Arkansas.

Respondents, NAP Financial Corporation n/k/a Aragon Financial Services, Inc. and Marc J. Berman, were represented by Phil Campbell, Esq. of Hilburn, Calhoun, Harper, Pruniski & Calhoun, North Little Rock, Arkansas.

CASE INFORMATION

The Statement of Claim was filed on or about May 6, 1994. Submission Agreement of Claimant, Lee Cazort, Jr., was signed on April 27, 1994.

Respondents', NAP Financial Corporation n/k/a Aragon Financial Services, Inc. and Marc J. Berman, Joint Statement of Answer was filed on or about July 22, 1994. The Submission Agreement of Respondent, NAP Financial Corporation n/k/a Aragon Financial Corporation, was signed on July 15, 1994 by Mark Lish, President. The Submission Agreement of Respondent, Marc J. Berman, was signed on July 25, 1994.

HEARING INFORMATION

The hearing was held on March 13, 1995 in Little Rock, Arkansas for a total of two (2) sessions.

CASE SUMMARY

Claimant, Lee Cazort, Jr. ("Cazort") alleged that Respondent, Marc J. Berman ("Berman"), while employed by or acting as an agent for the Respondent, NAP Financial Corporation n/k/a Aragon Financial Services, Inc. ("NAP Financial"), recommended unsuitable investments in stocks and options given the age, investment experience and financial acumen of the Claimant. Claimant opened

his account, allegedly through the solicitation of Berman, on July 2, 1992 by depositing \$25,000.00 into the account. In Count 1 of the Claim, Cazort contends that the Respondents were not registered to sell such securities in Arkansas in violation of the Arkansas Code Ann. Section 23-42-301. The Claimant further alleged that the transactions in the account were not necessary or appropriate for the Claimant's investment objectives and were made only to serve Respondents' purposes to charge excessive commissions and otherwise exploit the Claimant's account. Cazort asserted that the Respondents knowingly and intentionally conspired with each other for the purpose of unlawfully and fraudulently churning the account, engaging in unauthorized or unsuitable transactions and purchasing securities in a margin account. According to the Claimant, the Respondents offered and sold securities by means of untrue statements of material facts and by omission to state material facts including a representation that all monies would be invested in securities suitable for the Claimant's age and means and that the securities would reduce current income yet retain safety of principal. Cazort made other specific allegations, including, but, not limited to, violations of Section 22 (a)(3) of the Arkansas Securities Act, common law fraud, breach of common law fiduciary duty, negligence and violations of Section 12(2) of the Securities Act of 1933.

Respondents, NAP Financial Corporation n/k/a Aragon Financial Services and Marc J. Berman, denied the allegations set forth in the Statement of Claim. The Respondents specifically stated that the Claimant as an attorney and businessman had a great deal of experience in trading stocks and bonds and was advised and aware of the risks associated with a margin account. Respondents contended that NAP financial was at all times qualified to sell the types of securities sold to the Claimant. Respondents asserted that the Claimant indicated on new account forms and related documents that his net worth was between \$500,00.00 and \$1,000,000.00 and that he had fifty years of experience in trading stocks and bonds. Respondents further alleged that the Claimant discussed the performance of the account with Berman after the first option trades of July 1, 1992 and July 17, 1992 expired worthless and that the Claimant expressed pleasure with subsequent option trades of August 21, 1992 and August 24, 1992. In the Answer, the Respondents asserted the following affirmative defenses, including, but, not limited to, the Statement of Claim fails to state a claim upon which relief can be granted, the Claim is barred by the doctrines of waiver, estoppel, unclean hands and ratification, the Claimant failed to allege and demonstrate any wrongful acts or omissions by the Respondents which caused the Claimant to suffer damages, the Claimant did not rely, justifiably or otherwise, upon any conduct, act or omission of the Respondents, the claims are barred because the Claimant assumed the risk inherent in the transactions, the Claimant failed to mitigate his alleged damages, the Claimant is barred from any recovery because he authorized and consented to the transactions, the Claimant acquiesced in and ratified each transaction in that he failed to raise any objections, and the Claimant is estopped to assert claims against the Respondents because of his representations as to his financial position, investment objectives and experience in trading stocks and bonds, as well as his failure to complain about or raise any objections to the transactions.

RELIEF REQUESTED

Claimant, Lee Cazort, Jr., requested an award in the amount of \$40,782.90 in statutory damages for Counts I and II, \$100,000.00 in compensatory and punitive damages for Counts III and IV, recovery of the consideration paid by the Claimant for the purchase of stocks less any distributions to the Claimant prior to the filing of the Claim for Count V and restitution or damages in the sum of monies, assets or credits paid to the Respondents for the purchase of stocks, three years prior to the date of the filing of the original Complaint for Count VI of the Statement of Claim. Claimant also requested interest, attorneys' fees and costs.

Respondents, NAP Financial Corporation n/k/a Aragon Financial Services and Marc J. Berman, requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing on March 13, 1995, the Claimant withdrew voluntarily Counts 1 and 6 of the Statement of Claim.

The parties have agreed that a handwritten, signed Award may be entered. The parties have 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, Marc J. Berman, is liable for and shall pay to the Claimant, Lee Cazort, Jr., the sum of \$7,805.49 in actual damages plus simple interest at the rate of 6% per annum from October 21, 1992 until the total award is paid in full;
2. Respondents, NAP Financial Corporation n/k/a Aragon Financial Services and Marc J. Berman, are hereby jointly and severally liable for and shall pay to the Claimant the sum of \$13,652.00 in actual damages plus simple interest at the rate of 6% per annum from October 21, 1992 until the total award is paid in full;
3. The claims for punitive damages, restitution and other damages are hereby denied and dismissed in their entirety; and
4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session. There were two (2) hearing sessions x \$750.00 = \$1,500.00 in forum fees. Pursuant to Section 43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$200.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. Pursuant to Section 45 of the NASD Code of Arbitration Procedure, NASD shall **retain** the non-refundable surcharge in the amount of \$200.00 previously deposited with the NASD by the Respondents. Respondents, NAP Financial Corporation n/k/a Aragon Financial Services and Marc J. Berman, are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$750.00. **Fees are payable to the National Association of Securities Dealers, Inc.**

Steven Taylor Shults, Esq.
Steven Taylor Shults, Esq.
Public Arbitrator, Presiding Chair

W. Bradford Sherman, Esq.
W. Bradford Sherman, Esq.
Public Arbitrator

Clarence Albert Getchell, III
Clarence Albert Getchell, III
Industry Arbitrator

Date of Decision: April 5, 1995

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lee Cazort, Jr.

and

94-01703

Names of Respondents

NAP Financial Corporation
Marc J. Berman

DISCIPLINARY REFERRAL

During the course of the hearing in the above referenced matter, the undersigned arbitrators heard testimony and evidence which called into question whether Marc J. Berman should have any discretionary accounts and whether he should have direct supervision. We feel that the District Office of the NASD should investigate Mr. Berman's trades involving naked or uncovered options and the extent to which he makes those trades when they are unsuitable for customers.

Arbitrators Signatures

Steven Taylor Shults, Esq.

Steven Taylor Shults, Esq.

Public Arbitrator, Presiding Chair

W. Bradford Sherman, Esq.

W. Bradford Sherman, Esq.

Public Arbitrator

Clarence Albert Getchell, III

Clarence Albert Getchell, III

Industry Arbitrator

Dated: April 5, 1995