

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Richard A. Hintz & Grace M. Hintz

94-01732

Name of Respondent

William Harlan Seals

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**REPRESENTATION**

For Claimant: Richard A. Hintz and Grace M. Hintz ("Hintz") were represented by Diane Hodges, Sterling Heights, Michigan.

For Respondent: William Harlan Seals ("Seals") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: May 5, 1994.

Claimant's Submission Agreement signed on: May 2, 1994.

Claimant's Amended Statement of Answer filed on: March 20, 1995.

Statement of Answer filed by Respondent Seals on: July 27, 1994.

Respondent Seals' Submission Agreement signed on: July 19, 1994.

**HEARING INFORMATION**

Pre-Hearing Conference: February 28, 1995 for One (1) session before One (1) arbitrator.

Hearing Date/Sessions: May 23, 1995 for Two (2) sessions.

Hearing Location: Southfield, Michigan.

### **CASE SUMMARY**

Claimants Hintz, alleged that Respondent Seals, engaged in fraud, unauthorized trading, and churning while employed by or acting as an agent of Baraban Securities, Inc. ("Baraban") and TriGem Amerstock Corp. ("TriGem"). Hintz specifically alleged that:

1. In June, July and August of 1992, Seals made various unauthorized purchases and sales of stock in Hintz's Baraban Securities account. Hintz filed a complaint with Baraban Securities. Hintz withdrew this complaint after Seals convinced Hintz that the transactions were mistakes;
2. In October 1992, Seals convinced Hintz to write a letter to Baraban Securities authorizing the transfer of the Hintz account to TriGem, where Seals was currently employed;
3. Between November 5, 1992 and April 22, 1993, Seals made various unauthorized purchases and sales of stock in Hintz's TriGem account. When Hintz complained of the unauthorized trades, Seals stated that the transactions were mistakes and the transactions would be cancelled. Unknown to Hintz, these transactions were not cancelled;
4. For tax purposes, Hintz spoke to the manager of TriGem, to obtain information regarding the account. The manager sent Hintz a print-out of the account. Hintz had been unaware of all the unauthorized trading which had occurred, at both Baraban Securities and TriGem, until Hintz received this print-out;
5. Because of Seal's unscrupulous conduct, in April of 1993 Hintz requested a transfer of the account to Smith Barney Shearson. Smith Barney Shearson received a letter forged by Seals cancelling this transfer;
6. Hintz again requested the transfer of the account. To enable the transfer, several stocks were sold to pay the margin account. Hintz neither authorized nor had knowledge that Seals had purchased on margin; and
7. Because of Seals' injurious conduct, the total value of the account had decreased from \$69,405.20 to \$40,053.13.

Respondent Seals denied the material allegations in the Statement of Claim. Respondent Seals specifically alleged that:

1. All trades for the Hintz's account were authorized while he was Hintz's broker at both Baraban Securities and TriGem; and
2. In April of 1993, Hintz requested Seals to transfer the account to Smith Barney Shearson because Hintz believed he should have received discounted commissions. Further, Hintz stated he would retain his account at TriGem if Seals credited the account for \$500.00 as a rebate on commissions. The account was credited, and Hintz sent the letter requesting the cancellation of the transfer.

### **RELIEF REQUESTED**

Claimants requested an award against Respondent Seals in excess of \$45,002.07 representing actual damages; costs; and punitive damages.

Respondent Seals requested that the Claim be dismissed.

### **OTHER ISSUES CONSIDERED & DECIDED**

By letter dated February 21, 1995, Baraban Securities, Inc., who had been named a Respondent, informed the NASD that it had settled with the Claimants. Baraban Securities, Inc. was removed as a party from the arbitration.

By letter dated February 27, 1995, Claimants advised the NASD that they had settled their claims against TriGem Amerstock Corporation, a named Respondent. TriGem Amerstock Corporation was removed as a party to the arbitration.

At hearing, the Panel determined that it would accept the Claimants' Amended Statement of Claim dated March 20, 1995 after hearing the respective positions of the parties.

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. Respondents William Harlan Seals is liable for and shall pay to Claimants Richard A. Hintz and Grace M. Hintz the sum of \$2,500.00 as compensatory damages;

2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and

3. Any relief not specifically awarded is hereby denied.

### **OTHER COSTS**

TriGem Amerstock Corporation and Baraban Securities, Inc. shall each pay to the NASD the \$200.00 surcharge required pursuant to Section 45 of the NASD Code of Arbitration Procedure.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One Pre-Hearing session before One (1) arbitrator x \$300.00 = \$300.00; Two (2) hearing sessions x \$500.00 per session = \$1,000.00; Total fees = \$1,300.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and shall refund the \$500.00 hearing session deposit previously paid by Claimants Richard A. Hintz and Grace M. Hintz. Respondents William Harlan Seals is liable for and shall pay to the NASD the sum of \$1,300.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date:

/s/ Richard G. Porter, Esq.

July 27, 1995

Richard G. Porter, Esq.

Public Arbitrator

Chairperson

/s/ John F. Burns, Esq.

August 1, 1995

John F. Burns, Esq.

Public Arbitrator

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Douglas H. McDonald

Industry Arbitrator

For NASD Use Only

Date of Decision: August 10, 1995