

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Paul Giacini,
Claimant,

-vs-

Case Number: 94-01819

Sherwood Securities Corp.,
Respondent.

REPRESENTATION

For Claimant Paul Giacini ("Claimant"), Jeffrey L. Liddle, Esq. from the law firm of Liddle, Robinson & Shoemaker located in New York City.

For Respondent Sherwood Securities Corporation ("Respondent"), Thomas J. McCabe, Esq., New York City.

CASE INFORMATION

Statement of Claim was filed on May 27, 1994.

Claimant's Submission Agreement was signed on May 11, 1994

Claimant's Answer to Counterclaim was filed on August 19, 1994.

Statement of Answer with Counterclaim was filed by Respondent on July 8, 1994.

Respondent's Submission Agreement was signed on July 8, 1994.

HEARING INFORMATION

Pre-Hearing Conference:	April 28, 1995	- 1 session
Hearing Dates/Sessions:	May 8, 1995	- 2 sessions
	May 9, 1995	- 2 sessions
	May 10, 1995	- 2 sessions
	August 17, 1995	- 2 sessions
	August 18, 1995	- 2 sessions

Hearing Location: NASD, Inc.
Broad Financial Center
33 Whitehall Street
New York, New York 10004

CASE SUMMARY

Claimant seeks the return of \$50,000 he deposited with respondent upon commencement of his employment with Respondent. Claimant also seeks the payment of his percentage of accrued trading profits he earned but which was never paid to claimant.

Claimant alleges that, upon joining the Respondent's firm as a trader in 1993, he was told by Timothy Lang that Claimant would be expected to make a deposit of \$50,000 which would be held in an interest bearing account and which would be returned to Claimant upon termination of his employment with Respondent. Claimant alleges that during his employment with Respondent, he generated profits in the approximate amount of \$400,000.00 in his own account and profits of approximately \$120,000.00 in the "main account" in which he, Mr. Lang and others traded.

Claimant asserts that when he left the Respondent's employ, Respondent sought to charge him with one half the losses and expenses in the main account despite the fact that:

- a) Claimant's own trading activities in the account had been profitable.
- b) The losses and expenses were incurred by Timothy Lang.
- c) Respondent improperly allocated excessive amounts of expenses to the account.

Claimant further asserts that he was not informed that he could be charged with and be required to pay Respondent his, Lang's or anyone else's trading losses and expenses.

As to the Counterclaim, Claimant alleges there was no agreement between Claimant and Lang to "split equally profits, losses and expenses related to all trades effected in the joint account regardless of the trader who initiated the trade." Claimant also alleges he was never aware of the trades effected in the joint account either before the trade was effected or shortly after execution.

In the Answer and Counterclaim, Respondent alleges that respondent complied with the terms of its agreement with the Claimant and that the \$50,000 deposited by Claimant with Respondent was used to partially offset Claimant's share of aggregate deficit in his Sherwood accounts. Respondent also alleges that Claimant agreed to this arrangement.

Respondent further alleges that Claimant breached his contract in that he failed to pay in full \$59,301.49 due and owing as a result of the deficit in his accounts.

Respondent maintains that it was agreed and understood by Claimant and Respondent that Claimant would be compensated on the basis of the net profits generated from his trading. Respondent also alleges that Claimant understood and agreed he would be personally liable for his share of debits accrued in accounts he traded. Respondent further alleges that Claimant and Mr. Lang agreed to split equally profits, losses and expenses related to all trades effected in the joint account regardless of which trader initiated a particular trade. Respondent, in addition, alleges that both Claimant and Mr. Lang were authorized to initiate trades for the joint account.

RELIEF REQUESTED

Claimant requests the return of his deposit of \$50,000.00 with interest, payment of his percentage of accrued trading profits and not less than \$50,000.00 in costs and attorneys fees. As to the Counterclaim, Claimant requests dismissal, award of attorney's fees and costs and such other relief as the panel deems just and proper.

Respondent requests dismissal of Claimant's claim in its entirety, compensatory damages in the amount of \$59,301.49 on the Counterclaim together with interest from February, 1994. Respondent also requests an award of attorney's fees, costs and disbursements.

AWARD

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

- 1) The Claimant's claims for return of the \$50,000 deposit and for a percentage of the trading profits are dismissed.
- 2) The Respondent's counterclaim for \$59,301.49 is dismissed.
- 3) Each party is to bear its own attorney's fees.
- 4) There is no award of interest.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed equally against the Claimant and Respondent.

Non-refundable Filing Fees:	\$1,000 (\$500 claim; \$500 counterclaim)
Pre-Hearing Conference Fee:	300
Hearing Session Fee:	<u>7,500</u> (10 sessions at \$750 per session)
Total Fees:	\$8,800
Total Fees assessed against Claimant:	\$4,400 (one-half of \$8,800)
Claimant paid a Total of:	\$1,250
Claimant owes a Balance of:	\$3,150 (\$4,400 less \$1,250)
Total Fees assessed against Respondent:	\$4,400
Respondent paid a Total Fee of:	\$1,100
Respondent owes a Balance of:	\$3,300 (\$4,400 less \$1,100)

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

STATE OF ~~NEW~~ YORK

SS:

COUNTY OF ~~NEW~~ YORK

On this 5 day of December 1997, before me personally appeared
MICHAEL G. SHANNON to me known and known before me to be the
individual described in and who executed the foregoing instrument and he duly
acknowledged to me that he executed the same.

Katherine T. Sabia

KATHERINE T. SABIA
Notary Public, State of New York
No. 03-8731415
Qualified in Bronx County
Commission Expires 10/31/96

ARBITRATION PANEL

Joan Caridi, Esq.	-	Industry Chairperson
Leon Goldsholl	-	Industry Panelist
Matthew J. Tolan	-	Industry Panelist

Concurring Arbitrator's Signature

Joan Caridi

NASD Date of Decision: September 15, 1995

AFFIRMATION

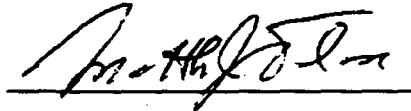
I, Joan Caridi, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

Joan Caridi
Joan Caridi, Esq.

ARBITRATION PANEL

Joan Caridi, Esq.	-	Industry Chairperson
Leon Goldsholl	-	Industry Panelist
Matthew J. Tolan	-	Industry Panelist

Concurring Arbitrator's Signature



NASD Date of Decision: September 15, 1995

AFFIRMATION

I, MATTHEW J. TOLAN, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.


Matthew J. Tolan

ARBITRATION PANEL

Joan Caridi, Esq.	-	Industry Chairperson
Leon Goldsholl	-	Industry Panelist
Matthew J. Tolan	-	Industry Panelist

Concurring Arbitrator's Signature

Leon Goldsholl

NASD Date of Decision: September 15, 1995

AFFIRMATION

I, LEON GOLDSHOLL, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above-captioned matter.

Leon Goldsholl
Leon Goldsholl