

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Darin J. Lieber

94-02317

Name of Respondent(s)

Brown & Company Securities Corporation

REPRESENTATION

For Claimant, Darin J. Lieber ("Lieber") appeared Andrew Rossman of Akin Gump Strauss Hauer & Feld, L.L.P.

For Respondent, Brown & Company Securities Corporation ("Brown") appeared Barry Fischer of Bernkopf, Goodman & Baseman.

CASE INFORMATION

Statement of Claim filed on: June 17, 1994.

Claimant's Submission Agreement signed on: June 15, 1994.

Statement of Answer filed by Respondent on: September 29, 1994.

Respondent's Submission Agreement signed on: September 29, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	October 11, 1995	-	1 sessions
Hearing Date/Sessions:	October 16, 1995	-	2 sessions

The hearings took place at the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant, Lieber, alleged that on April 29, 1990 he opened a margin account with the Respondent. From May 3, 1990 until he closed his account on October 5, 1993 Lieber stated he placed numerous trades with Brown on margin. Primarily, stated Claimant, his trading consisted of selling short uncovered put options. Furthermore, he stated that frequently when the market price of the underlying stock dipped below the strike price of the option, Lieber received margin calls. The Claimant alleged that several of these margin calls remained outstanding for more than seven business days. The Claimant further contended that at no time did Brown ever liquidate Lieber's account or any securities held therein to

satisfy any margin call regardless of how long such calls were outstanding.

The Claimant alleged that as a result of its actions, the Respondent violated Regulation T, 12 C.F.R. sections 220.4 and 220.18; Article III, Section 30, Appendix A, Section 3(a)(1) of the NASD Rules of Fair Practice, and the Massachusetts Consumer Protection Act. Also, as a result of these violations Lieber stated he incurred monetary losses which could have been substantially reduced had Brown complied with the above named provisions.

Respondent alleged that the NASD was without jurisdiction to hear the claims and that the Statement of Claim failed to state a claim upon which relief could be granted. Brown alleged that there is no private right of action for an investor, under either section 7 of the Exchange Act or Regulation T, for alleged violations of margin rules, and therefore, the NASD is without jurisdiction to hear the claims raised. In addition, the Respondent contended that there was no private right of action for violation of rules or regulations of self-regulatory organizations. Accordingly, the NASD was without jurisdiction to hear the claims with respect to an alleged violation of the NASD Rules of Fair Practice.

Respondent also alleged that the Claimant is not entitled to bring a claim in the nature of breach of fiduciary duty because under Massachusetts law a brokerage firm has no fiduciary duty to its customers. Brown contended that Massachusetts law governed pursuant to the terms the Customer Agreement between Brown and Lieber. Moreover, the Respondent contended that even if New York law was controlling the result would be the same.

RELIEF REQUESTED

Claimants requested judgment in the amount of \$80,000 to \$90,000, plus interest; costs and attorneys' fees; and such other and further relief as the arbitrators deem appropriate.

Respondent requested that all claims be dismissed.

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 original remain on file with the NASD.

The Respondent moved to dismiss because the NASD lacked jurisdiction to hear the claims and because the Claimant failed to state a claim upon which relief could be granted.

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:

All claims are dismissed in their entirety.

FORUM FEES

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

Non-refundable filing fee:	\$ 150.00
Hearing Sessions (2 @ \$500 per session)	\$1,000.00
Pre-hearing Sessions (1 @ \$300 per session)	<u>\$ 300.00</u>
Total Fees:	\$1,450.00

1. The Claimant paid \$650.00 and owes \$75.00 to the NASD.
2. The Respondent has paid nothing and owes \$725.00 to the NASD.

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

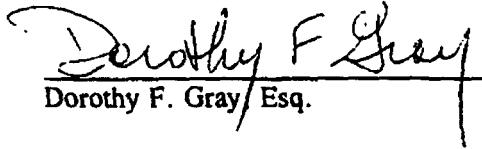
Concurring Arbitrators' Signatures
Name

Public/Industry


Dorothy F. Gray, Esq.

Public

I, Dorothy F. Gray, Esq., do hereby affirm pursuant to Article 7505 to the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.


Dorothy F. Gray, Esq.

Date of Decision: January 23, 1996

FORUM FEES

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

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Concurring Arbitrators' Signatures

Name

Public/Industry


Matthew J. Tolan

Industry

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


Matthew J. Tolan

Date of Decision: January 23, 1996

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Concurring Arbitrators' Signatures

Name

Public/Industry

Madelon M. Rosenfeld, Esq. Public
Madelon M. Rosenfeld, Esq.

I, Madelon M. Rosenfeld, Esq., do hereby affirm pursuant to Article 7505 to the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

Madelon M. Rosenfeld, Esq.
Madelon M. Rosenfeld, Esq.

Date of Decision: January 23, 1996