

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

William D. Steinruck as Trustee of the
William D. Steinruck Revocable Living
Trust dated August 27, 1987

and

NASD Case Number 94-02379

The Harriman Group, Incorporated,
Dennis Seleeby, Shawn Nester and
Stephen Palumbo

REPRESENTATION OF PARTIES

Claimant, William D. Steinruck as Trustee of the William D. Steinruck Revocable Living Trust dated August 27, 1987 appeared Pro Se.

Respondents, The Harriman Group, Incorporated, Dennis Seleeby, Shawn Nester and Stephen Palumbo were represented by Paul C. Kurland, Esq. of Snow, Becker, Krauss, P.C. located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about June 15, 1994.

The Submission Agreement of Claimant, William D. Steinruck as Trustee of the William D. Steinruck Revocable Living Trust dated August 27, 1987 was signed on June 15, 1994.

The Joint Statement of Answer filed by Respondents, The Harriman Group, Incorporated and Stephen Palumbo was filed on or about August 19, 1994.

The Amended Joint Statement of Answer of Respondents, The Harriman Group, Incorporated, Stephen Palumbo and Dennis Seleeby was filed on or about August 24, 1994.

The Statement of Answer of Respondent, Shawn Nester was submitted on or about October 14, 1994.

The Submission Agreement of Respondent, The Harriman Group, Incorporated was signed on July 27, 1994 by Bernice Lerner, an Officer of The Harriman Group, Incorporated.

The Submission Agreement of Respondent, Dennis Seleeby was executed on September 26, 1994.

The Submission Agreement of Respondent, Shawn Nester was executed on October 14, 1994.

The Submission Agreement of Respondent, Stephen Palumbo was signed on July 27, 1994.

HEARING INFORMATION

The hearing was held on October 11, 1995 in Houston, Texas for a total of two (2) sessions.

CASE SUMMARY

In the Statement of Claim, William D. Steinruck as Trustee of the William D. Steinruck Revocable Living Trust dated August 27, 1987 ("Steinruck") claimed that he transferred his account of \$100,000.00 to the Harriman Group, Incorporated ("Harriman") in or about March, 1993 after being assured by Dennis Seleeby ("Seleeby"), the trust's broker, that Harriman had an outstanding research department and that Harriman would come up with some good investments. As alleged, Steinruck contacted Harriman about seven months later to discover that the balance of his account was about \$72,000.00. Steinruck then spoke with Shawn Nester ("Nester"), a partner at Harriman, who allegedly agreed to handle Steinruck's account since the Claimant expressed dissatisfaction with Seleeby's handling of the account. Nester allegedly told Steinruck that he would not lose any more money if Steinruck kept his account at Harriman and, based on those representations, Steinruck left his account open at Harriman. According to the Claim, Steve Palumbo ("Palumbo") from Harriman called the Claimant several weeks later claiming to be working with Nester in the handling of the account and also claiming that he had some stocks which would double in a month or so and providing the names of the stocks. Steinruck asserted that there were five transactions which appeared on his October, 1993 statement that he did not give authorization. Steinruck claimed that Palumbo made these unauthorized purchases and sales. The Claimant allegedly called Palumbo asking for an explanation about the unauthorized transactions and inquiring about only receiving one out of five confirmation slips. Steinruck made other specific allegations against the Respondents including, but not limited to, deceiving him, misrepresentation of its services and depleting his savings while generating large fees for the company.

Respondents, The Harriman Group, Incorporated, Dennis Seleeby and Stephen Palumbo denied the allegations of wrongdoing set forth in the Statement of Claim. The Respondents specifically stated Steinruck was a customer of Seleeby's prior to 1993 at another brokerage firm called Greenway Capital Corporation where he would trade speculative securities. The Respondents contended that Steinruck told them he was an experienced, wealthy investor with a substantial annual income and net worth as well as sufficient assets to invest and speculate. The Respondents further contended that Steinruck was consulted and agreed to each and every transaction before it was executed then received a confirmation statement after execution. The Respondents stated that any losses the Claimant suffered in his account were caused solely by Claimant's own acts and omission. The Respondents asserted that the Claimant's claims are barred by the doctrine of laches; the doctrine of estoppel; waiver; Claimant's ratification of Respondents' acts; and Claimant's consent to Respondents' acts.

Respondent, Shawn Nester denied the allegations contained in the Claim. Nester asserted many affirmative defenses including, but not limited to, failure to state a claim upon which relief may be granted; Claimant approved, authorized and ratified the acts complained of and, accordingly, is precluded from asserting a basis for recovery; the losses, if any, were caused by his own conduct; Claimant did not rely to his detriment on the action or inaction of Nester or on any act or omission legally attributable to Nester; and the claims are barred, in whole or in part, by estoppel, laches and applicable statutes of limitation.

RELIEF REQUESTED

William D. Steinruck as Trustee of the William D. Steinruck Revocable Living Trust dated August 27, 1987 requested an award in the amount of \$100,000.00 for the return of the original investment, \$6,000.00 in interest and \$20,000.00 in punitive damages.

Respondents, The Harriman Group, Inc., Dennis Seleeby, and Stephen Palumbo requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

Respondent, Shawn Nester requested that the Statement of Claim be dismissed in its entirety and that he be awarded costs of arbitration.

OTHER ISSUES CONSIDERED & DECIDED

Paul Kurland, Esq. stated at the hearing on October 11, 1995 that he was representing all Respondents including The Harriman Group, Inc., Dennis Seleeby, Shawn Nester and Stephen Palumbo and that Respondent, Shawn Nester was no longer being represented by Stephen L. Ratner, Esq. of Rosenman & Colin. Respondent, Shawn Nester failed to appear in person for the hearing. Upon review of the file and the representations made the parties and counsel and since Shawn Nester answered the claim and submitted a Submission Agreement, Shawn Nester is bound by the determination of the arbitration panel on all issues submitted in accordance with the NASD Code of Arbitration Procedure.

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. The Statement of Claim is hereby dismissed and denied in its entirety; and

2. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were two (2) sessions x \$750.00 = \$1,500.00 in forum fees. Pursuant to Section 43(b) of the Code of Arbitration Procedure (the "Code"), 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 Code, 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. The NASD shall retain the member surcharge in the amount of \$200.00 which was previously submitted by The Harriman Group, Inc. in accordance with Section 45 of the Code. Respondents, The Harriman Group, Incorporated, Dennis Seleeby, Shawn Nester and Stephen Palumbo, jointly and severally, are liable for and shall pay to the Claimant, William D. Steinruck as Trustee for the William D. Steinruck Revocable Living Trust dated August 27, 1987 the sum of \$950.00 as reimbursement. Respondents, The Harriman Group, Incorporated, Dennis Seleeby, Shawn Nester and Stephen Palumbo, jointly and severally, are liable for and shall pay to the NASD the sum of \$750.00 in additional forum fees. The NASD shall retain postponement fees in the amount of \$750.00 previously deposited with the NASD by the Respondent, The Harriman Group, Incorporated. **Fees are payable to the National Association of Securities Dealers, Inc.**

Arbitrators' Signatures:

Dated:

Michael E. McGown, Esq.
Michael E. McGown, Esq.
Public Arbitrator, Presiding Chair

October 27, 1995

Thomas A. Martin
Thomas A. Martin
Public Arbitrator

October 24, 1995

Ira Green
Ira Green
Industry Arbitrator

October 25, 1995

Date served by the NASD: October 30, 1995

N.A.S.D. Report of the Arbitrators

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

William D. Steinruck as Trustee
of the William B. Steinruck Revocable
Living Trust dated August 27, 1987

and

Case 94-02379

The Harriman Group, Incorporated,
Dennis Seleeby, Shawn Nester and
Stephen Palumbo

During the course of the hearing in the above referenced arbitration matter, the undersigned arbitrators heard testimony and evidence which called into question certain actions and procedures of the Respondents. The undersigned arbitrators recommend that the District Business Conduct Committee examine The Harriman Group to ensure that the firm is in compliance with NASD regulation regarding supervision, suitability requirements and new account forms and procedures. The undersigned arbitrators recommend that the District Business Conduct Committee review the performance of Stephen Palumbo with respect to his knowledge of and compliance with NASD regulations regarding supervision, suitability requirements and new account forms and procedures. The undersigned arbitrators recommend that the District Business Conduct Committee review the performance of Dennis Seleeby with respect to his knowledge of and compliance with NASD regulations regarding suitability requirements and new account forms and procedures.

Arbitrators' Signatures:

Dated:

Michael E. McGown, Esq.
Michael E. McGown, Esq.

October 27, 1995

Ira H. Green
Ira H. Green

October 25, 1995

Thomas A. Martin
Thomas A. Martin

October 24, 1995