

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James J. Feeney

95-00104

Name of Respondents

Bryn Mawr Investment Group, Inc.
Richard M. Muhlberg

REPRESENTATION

Claimant James J. Feeney ("Claimant") was represented by Anthony J. Hom, Esq., Philadelphia, PA

Respondents Bryn Mawr Investment Group, Inc. ("BMIG") and Richard M. Muhlberg ("Muhlberg") were represented by Paula Shaffner, Esq., Saul, Ewing, Remick & Saul, Philadelphia, PA

CASE INFORMATION

The Statement of Claim was filed January 9, 1995
Claimant's Submission Agreement was signed on January 11, 1995

The Joint Statement of Answer filed by BMIG and Muhlberg (collectively "Respondents") was filed on March 1, 1995
BMIG's Submission Agreement was signed on March 1, 1995
Muhlberg's Submission Agreement was signed on March 1, 1995

HEARING INFORMATION

Hearing Date/Sessions: March 11, 1996/two sessions

Hearing Location: Vincent Varallo Associates, Inc.
Philadelphia, PA 19103

CASE SUMMARY

Claimant alleged, among other things, that Respondents fraudulently misrepresented the risks associated with trading in speculative securities, trading in options, excessive short trading and trading on margin; all of which Respondents recommended to Claimant. Claimant alleged that Respondents induced Claimant to authorize transactions which were unsuitable for Claimant's investment goals. Claimant alleged that Respondents had been informed that Claimant

was on disability and wanted preservation of capital and long-term capital appreciation in diversified, investment grade securities. Claimant alleged that Muhlberg, employed by BMIG, misrepresented to Claimant that all recommended securities had been thoroughly researched by Respondents. Claimant alleged that Claimant's account was churned solely for the benefit of Respondents. Claimant alleged that Muhlberg persuaded Claimant to authorize excessive trading in securities such as Corest, Chase, Humana, Amtech, Unisys, Novell and Kroeger to gain large commissions for Respondents. Claimant alleged that BMIG was negligent and failed to properly supervise Muhlberg in the management of Claimant's account. Claimant alleged that Respondents breached their contract with Claimant as well as their fiduciary duty when Respondents failed to provide Claimant with competent, professional services. Claimant alleged the activities of Respondents violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law and Section 401 of the Pennsylvania Securities Act and Section 10b and Rule 10b5 of the Exchange Act of 1934, as well as the rules of the National Association of Securities Dealers ("NASD") and the New York Stock Exchange ("NYSE"). Claimant alleged that he has been damaged and Respondents must be held accountable.

Respondents categorically denied all allegations of wrong doing or liability. Respondents maintained that Claimant opened a margin account in March 1993. Respondents maintained that Claimant misrepresented Claimant's income and liquid net worth on both the new account form and later on an option agreement. Respondents maintained that Claimant represented himself as an experienced, sophisticated and aggressive stock trader. Respondents maintained that Claimant repeatedly stated that Claimant did not want mutual funds or any security which moved too slowly. Respondents maintained that Claimant expressed an interest in buying call options and that Claimant met with Muhlberg to discuss the risks and possible rewards of trading in call options. Respondents maintained that Claimant signed an option agreement and began trading in call options immediately. Respondents maintained that Claimant portrayed himself as a "trader" with the financial assets to engage in short term speculative trading. Respondents maintained that Claimant knowingly and intentionally adopted an aggressive trading pattern for short term gains and losses. Respondents maintained that Claimant acknowledged that he fully understood the frequency of the trading in his account, the nature of the securities and the commissions generated. BMIG maintained that Muhlberg was properly supervised and that Claimant received competent and professional financial services at all times. Respondents maintained that Claimant's sustained similar trading practices at Quick & Reilly as well as Olde Discount. Respondents maintained that any losses suffered by Claimant were the result of Claimant's decisions and trading practices combined with market conditions.

Respondents alleged, in a counter claim, that Claimant left a debit balance of \$1,598.00 in his account when he ceased trading at BMIG.

Respondents alleged that Claimant is liable for the debit balance in Claimant's account.

Claimant maintained that any debit balance in his account was the result of improper management of Claimant's account by Respondents. Therefore, Claimant maintained that Claimant is not liable for the debit balance.

RELIEF REQUESTED

Claimant's amended request for relief at the hearing was damages of \$75,436.00; treble damages; interest from the date the losses were incurred to the date of the arbitration hearing; as well as the costs of this arbitration proceeding including attorney's fees. Claimant also requested that the Counterclaim be dismissed.

Respondents requested that Claimant's claim for damages be denied in its entirety and that the costs of this proceeding, including attorney's fees, be assessed to Claimant. Respondents requested relief in the Counterclaim \$1,598.00.

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.

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 denied in its entirety.
2. The request for treble damages is denied.
3. The Counterclaim is denied in its entirety.
4. Each party is to pay its own costs including attorney's fees.
5. Any and all relief not specifically addressed herein is denied.

FORUM FEES

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

2 Hearing Sessions x \$750.00 = \$1,500.00

Forum Fees are assessed jointly and severally against Respondents. Respondents are liable for and shall reimburse to Claimant the \$750.00 hearing session deposit which Claimant submitted to the NASD leaving a net assessment of \$750.00.

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

Date

Concurring Arbitrators' Signatures

3/22/96

Fred S. Pieroni
Fred S. Pieroni, Presiding
Public Arbitrator

Michael D. Soifer
Public Arbitrator

Alfred K. Althouse, Jr.
Industry Arbitrator

Date Decision Served by NASD: March 28, 1996

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Fred S. Pieroni, Presiding
Public Arbitrator

Michael D. Soifer
Public Arbitrator

3/24/96

Alfred K. Althouse, Jr.
Alfred K. Althouse, Jr.
Industry Arbitrator

Date Decision Served by NASD:

March 28, 1996