

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Richard F. Cooper, Jr.

Case No. 95-03075

Name of Respondents

Janney Montgomery Scott Inc.  
Arthur Brent Taylor

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**REPRESENTATION**

For Claimant Richard F. Cooper, Jr. ("Cooper") : Jonathon Katz, Esq. of Jacobs, Grudberg, Belt & Dow, P.C. of New Haven, CT.

For Respondents Janney Montgomery Scott, Inc. ("JMS") and Arthur Brent Taylor ("Taylor"): Paul D. Ragosta, Esq. of Providence, RI.

**CASE INFORMATION**

The Statement of Claim was filed on June 22, 1995. Claimant's Submission Agreement was signed on June 22, 1995

A Joint Statement of Answer was filed by Respondents JMS and Taylor on August 11, 1995. Respondent JMS's Submission Agreement was signed on July 12, 1995. Respondent Taylor's Submission Agreement was signed on August 10, 1995.

**HEARING INFORMATION**

Hearing Dates/Sessions:	January 28, 1997	2 Sessions
	January 29, 1997	2 Sessions
	January 30, 1997	2 Sessions

Hearing Location: Ritz-Carlton Hotel , Boston, MA.

## CASE SUMMARY

Claimant alleged that he met Taylor in late 1985 and was convinced by him to open an account at JMS using Taylor as his registered representative. Claimant testified that he was an unsophisticated investor who relied on his broker to make appropriate investment recommendations; however, Claimant had also maintained securities accounts since the 1970's and had actively managed several apartment buildings in which he had an ownership interest and a business that installed satellite television antennas. Claimant further testified that that he lacked the knowledge and experience to evaluate a proposed investment and did not understand the impact an investment may have on the general level of risk of a portfolio.

Between January and July, 1988, Claimant began active trading in his JMS account, to which he contributed cash and securities with a value of approximately \$300,000. At this time Claimant testified that he informed Taylor that he was not working, that he was financially responsible for three children, and that his investment objective was to generate income while preserving capital. Cooper claimed that the vast majority of investment positions taken were suggested, solicited and recommended by JMS and Taylor. During the period in issue Claimant also maintained an account at Alex Brown & Co. Claimant testified that he relied on Taylor and his broker at Alex Brown for suitable investment advice, and, at Taylor's recommendation, invested his account in a variety of allegedly unsuitable and high risk securities (including so-called "index options" based on the OEX index) employing strategies recommended by Taylor (including the purchase of OEX puts and other options on margin) without regard to his investment objectives and financial needs. Taylor testified that while he recommended the price at which Claimant might wish to purchase or sell specific options and recommended specific securities, Cooper was the ultimate decision maker on all purchases and sales.

Claimant contended that JMS and Taylor acted wrongfully in that

1. they recommended to and purchased for his account unsuitable investments without any reasonable basis for their recommendations in violation of the "know your customer" rules of the NYSE and NASD and
2. that his account had been excessively traded.

Claimant also argued that JMS failed to properly supervise Taylor when it permitted Cooper to trade index options at a loss approaching \$40,000 in some months. JMS had permitted Cooper to open a margin and options account based on representations of Cooper (transmitted through Taylor) that he had a net worth of at least \$1 million. Cooper also executed a Customer Account Agreement For Equity and Index Options which contained affirmative statements about the riskiness of options. He also received at least four "activity letters" from JMS's home office in May, 1989, December, 1989, December, 1990 and July, 1992. JMS did not limit Cooper's option trading activity to the sale of covered calls until late 1992.

Claimant contended respondents were liable on the theories of breach of contract, breach of the duty of good faith and fair dealing, violation of the Securities Exchange Act, fraud, violation of exchange rules, breach of JMS's duty to supervise, violation of Connecticut Securities Act, negligence, negligent failure to supervise,

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breach of fiduciary duties and negligent infliction of emotional distress. JMS and Taylor denied that they had engaged in any misconduct and had made full disclosure to Mr. Cooper of all risks in executing transactions at Cooper's request and on his behalf.

### **RELIEF REQUESTED**

Claimant requested:

1. Compensation for his out-of-pocket losses aggregating approximately \$393,000.
2. Return of all margin interest and commissions paid, on the total amount of approximately \$155,000.
3. Compensation for the loss of gain and income he would have earned had his account been managed in a lawful manner between approximately January, 1988 and the present, which damages were estimated to be \$450,000.
4. Exemplary and punitive damages for one or more of the following: common law fraud; violations of Section 10b-5; breach of fiduciary duty; violations of the Connecticut Uniform Securities Act, and willful breach of contract.
5. Damages for emotional distress.
6. Attorney's fees.
7. Expert witness fees.
8. Forum fees
9. Such other and further relief as the arbitration panel sees fit to award.

Respondents requested the matter be dismissed and that they be awarded all costs and attorney's fees.

### **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:

The record of this case shows that while Claimant had relied on a number of securities firms for advice since the 1970's and maintained active accounts at at least two firms during the late 1980's and early 1990's, respondents facilitated claimant's use of trading strategies (particularly the purchase of OEX puts in a rising market) which resulted in losses of up to \$40,000 per month. Whether or not Claimant initiated the use of these unsuccessful strategies, Taylor's recommendation of entry and exit points for

options trading enabled Claimant to continue a pattern of trading that was causing losses at a level beyond Claimant's risk tolerance. As such, whatever Claimant's level of sophistication and involvement in the development of a trading plan, Respondents must bear some responsibility for trading losses which did not end until JMS barred Claimant from creating any new positions in options other than covered calls in 1992. Accordingly,

1. Respondents JMS and Taylor are found to be jointly and severally liable to and shall pay Claimant the sum of \$65,000.00 in compensatory damages.
2. Respondent Taylor is found to be liable to and shall pay claimant the sum of \$10,000.00 in compensatory damages.
3. Claimant's request for punitive damages is denied.
4. Each party shall bear its own expenses, including attorney's fees.
5. All other requests for relief are hereby denied in their entirety.

#### **FORUM FEES**

Pursuant to Rule 10332(c) (formerly Section 43(c)) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee submitted by claimant and have assessed the following forum fees:

6 Hearing Sessions x \$1,000.00	= \$6,000.00
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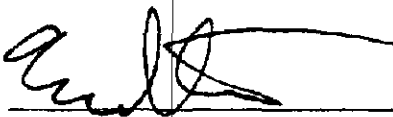
The arbitrators have determined that claimant shall be assessed 50% of the outstanding forum fees and that respondents JMS and Taylor shall be assessed, jointly and severally, 50% of the outstanding forum fees.

Therefore claimant is liable to and shall pay NASD Regulation, Inc. the sum of \$3,000.00 less \$1,000.00 previously remitted as a hearing session deposit, net \$2,000.00 due.

Therefore respondents JMS and Taylor are jointly and severally liable to and shall pay NASD Regulation, Inc. the sum of \$3,000.00.

Fees are payable to NASD Regulation Inc.

ARBITRATORS' SIGNATURES



Edward R. Wiest, Esq.  
Public Chairman

Date of Decision 5/13/97

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Theodore R. Turner, Jr.  
Industry panelist

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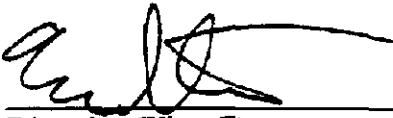
Edgar H. Scholl  
Public panelist

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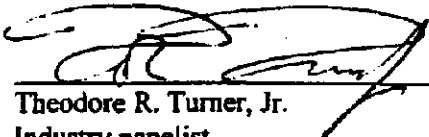
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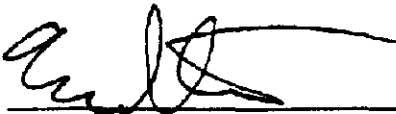


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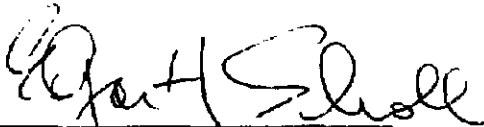
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