

**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION**

In the Matter of the Arbitration Between

Name of Claimant:

B. Andrew Farah

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Securities Dealers, Inc.

1996

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Name of Respondent

Jere Wicker-t

**REPRESENTATION**

Claimant B. Andrew Farah ("Claimant") was represented by Thomas G. Gardiner, Esq., Gardiner Koch & Hines, Chicago, IL.

Respondent Jere Wickert ("Respondent") was represented by Kenneth Sullivan, Esq., Joel M. Carlins and Associates, Chicago, IL.

**CASE INFORMATION**

The Statement of Claim was filed June 27, 1995.

Claimant's Answer to the Counterclaim was filed August 7, 1995.

Claimant's Uniform Submission Agreement was signed June 22, 1995.

Respondent's Statement of Answer and Counterclaim was filed July 27, 1995.

Respondent did not file an executed Uniform Submission Agreement.

**HEARING INFORMATION**

Hearing Date/Sessions: August 15, 1996/two sessions

Hearing Location: Hyatt Hotel  
Charlotte, NC

**CASE SUMMARY**

Claimant alleged that in 1994 Claimant opened an account with Respondent to trade S & P 100 options. At the time Claimant opened the account, Claimant relied upon Respondent's representations that (1) no one has lost money with him to date; (2) that all options would be hedged with the same option for the same month at different strike levels, i.e. if Respondent sold a 425 call he would also simultaneously sell a 430 call; (3) Respondent was on top of the market all day or had another broker watching the market if he was out; and (4) Respondent had substantial experience and great expertise. Claimant alleged that he opened the account with \$30,000.00, which he had borrowed. Claimant alleged that he told Respondent that the money was borrowed. Claimant had just recently obtained a job as a physician and was in debt with school loans. Claimant gave Respondent his telephone and pager numbers at which he

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could be reached. Claimant had weekly contact with Respondent. Claimant alleged he told Respondent that he was relying upon him as a professional. This reliance was particularly important because Claimant had sustained losses in the few options contracts that he had purchased prior to contracting with Respondent and could not follow the market closely because of the demands of the practice of medicine. Claimant alleged that by the end of May 1994, Respondent had lost \$8,000.00 in the account. In June 1994, Respondent showed a profit of \$5,000.00. As of July 31, 1994, his account had a credit balance of \$21,666.00. In August 1994, despite the fact that the account had approximately \$12,000.00 - \$14,000.00, Respondent purchased 60 contracts for Claimant exposing him to substantial risks well beyond his net worth and risk capital. On August 26, 1994, Respondent moved the long position of the September 425 calls to October and did not move the short position. Respondent moved the short position to October on August 29, 1994, after leaving Claimant's position "naked" over the weekend. The enormity of the positions placed by Respondent is shown by the fact that in August, his debits totaled \$207,691.45 and credits of \$176,949.06. Respondent ultimately closed Claimant's account with a debit balance of \$16,478 as a result of these transactions. In a letter to Claimant, Respondent acknowledged that the damage suffered was a result of his trading decision to move the position from September to October one leg at a time. At hearing, Respondent claimed that he had difficulty moving the short leg to October because the market halted trading for approximately 43 minutes due to communications problems, but the daily market data information admitted into evidence shows that such a simultaneous move could have been made before the market was halted. In his letter, Respondent admitted that the market advance alone would not have damaged Claimant. The daily market data information supports the fact that if Respondent had completed a simultaneous transaction when moving the position to October, Claimant's loss would have been significantly reduced. Respondent sold his long position in September 430s between 8:49 and 10:10 a.m. at a price of \$7.929956. If Respondent covered the September 425s at that time, the highest trade was 12 5/8. On August 29, 1994, Respondent covered the September 425s at a price of \$16.79454. If he had kept Claimant hedged by making a simultaneous transaction, Respondent would have saved \$24,750.00 for Claimant. Respondent admitted that in other transactions for Claimant, he made simultaneous trades to keep positions hedged and had never left open one leg of the transaction. In Respondent's words, in his letter to Claimant, "If I would have chosen the more conservative approach to moving the position simultaneously on both sides we would not have suffered extreme damage when the market closed." Furthermore, despite Respondent's change in strategy from that agreed upon with Claimant, Respondent never bothered to call Claimant to get authorization for to take the risk of moving the position one leg at a time.

Claimant denied the allegations contained in the Counterclaim.

Respondent denied allegations of wrong-doing. Respondent admits that he would have told Claimant that he was experienced in trading options and Respondent maintains that is true. Respondent maintained the issues presented then are whether Respondent represented to Claimant that Respondent's clients made 10% a month and no one lost money and whether, even if Respondent had made such statements, Claimant could have reasonably relied on such statements to his detriment. Respondent denies that he had any knowledge of Claimant's existing debt and denies that he had any knowledge Claimant had borrowed the money invested prior to Claimant's so informing Respondent when Respondent called Claimant to tell him of the margin call in his account. Respondent states that he reasonably relied on Claimant's financial and investment background description of himself as set forth in the account opening form executed by Claimant. Respondent reasonably relied on the information provided by Claimant, Claimant was informed of all trades and Claimant directed or ratified all trades in the account. Respondent maintained he was not negligent in the investments made or those he recommended be made in Claimant's account. Respondent maintained that his recommendations, when judged by acceptable

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industry standards, were reasonable and prudent. Respondent maintained that any loss suffered by Claimant was the result of Claimant's own actions and decisions.

Respondent alleged in the Counterclaim that Claimant breached his duties under the Margin Agreement executed by Claimant and failed to pay the debit balance in his account, which debit balance Respondent, by virtue of his relationship with Alaron Securities Corp., was forced to pay out of commissions earned by Respondent on his accounts. The issue presented is whether Claimant breached his agreement by failing to pay the debit balance in his account.

#### **RELIEF REQUESTED**

Claimant requested the return of his initial investment of \$30,000.00; plus interest; lost commissions; attorney fees; exemplary damages; and costs.

Claimant requested that the Counterclaim be dismissed and all costs assessed to Respondent.

Respondent requested that the Statement of Claim be dismissed.

Respondent requested damages in the amount of \$16,478.00 as damages incurred by Respondent in having to pay the debit balance in Claimant's account.

#### **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 originals remain on file with the NASD Regulation.

Claimant informed the panel that the claims against Alaron Securities were settled prior to the hearing.

While Respondent did not file a properly executed submission to arbitration, Respondent is required to submit to arbitration pursuant to Rule 10301 (formerly Section 12) of the NASD Regulation Code of Arbitration Procedure.

#### **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 dismissed in its entirety.
2. Claimant is liable to and shall pay to Respondent \$8,000.00.
3. Each party shall bear its own costs and expenses.
4. Any relief not specifically addressed herein is denied.

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**FORUM FEES**

Pursuant to Rule 10332(c) (previously Section 43) of the Code of Arbitration Procedure, the following Forum Fee are assessed:

2 sessions x \$600.00 = **\$1,200.00**


Forum Fees are assessed in equal amounts to each party. Claimant is to receive credit for the \$400.00 hearing session deposit previously credited to the NASD Regulation, leaving a net assessment due of \$200.00. Respondent is to receive credit for the \$600.00 hearing session deposit previously deposited with the NASD Regulation, leaving no further assessment due.

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

**DATE**

**CONCURRING ARBITRATORS' SIGNATURES**

9/5/96

  
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Simone Sicola, Presiding  
Public Arbitrator

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Thomas S. Wallace  
Public Arbitrator

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William W. Marchant, Jr.  
Industry Arbitrator

Date Decision Served by NASD Regulation: September 13, 1996

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Simone Sicola, Presiding  
Public Arbitrator

8/31/96

  
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Thomas S. Wallace  
Public Arbitrator

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William W. Marchant, Jr.  
Industry Arbitrator

Date Decision Served by NASD Regulation: September 13, 1996

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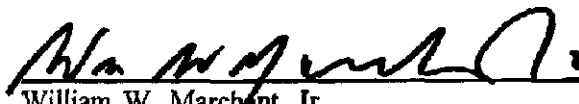
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