

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Sharif Amanat, Custodian/Omar Amanat

95-03599

Name of Respondent(s)

H. J. Meyers & Co., Inc.
Rizwan Mahmood

REPRESENTATION

For Claimant, Sharif Amanat, Custodian/ Omar Amanat ("Claimant"), appeared Henry K. Becker, Esq. of the law firm Henderson & Becker located in Chicago, Illinois.

For Respondent H.J. Meyers & Co., Inc. ("Meyers"), appeared Stephen C. Voris, Esq. of the law firm Burke, Warren, & MacKay, P.C. located in Chicago, Illinois.

Respondent Rizwan Mahmood did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: July 25, 1995.

Amended Statement of Claim filed: August 18, 1995.

Claimant's Submission Agreement signed on: August 14, 1995.

Statement of Answer and Cross-Claim filed by Meyers on March 13, 1996.

Respondent Meyers executed a Submission Agreement on: October 20, 1995.

Respondent Rizwan Mahmood neither filed a Statement of Answer nor executed a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions June 5, 1996 - One Session

Hearing Location: The hearings were held at the NASD offices located in New York, N.Y.

CASE SUMMARY

Claimant alleged that in early 1993, he opened an account with Thomas James Associates, Inc. ("Thomas James") as custodian for his son Omar Amanat. Claimant alleged that in March of 1993 he authorized Rizwan Mahmood ("Mahmood"), the broker handling the account, to purchase 1,000 shares of BPI Packaging Technologies ("BPI") and in April, 1993 he authorized the purchase of 1,000 shares of Standard Microsystems Corp. ("Standard").

Claimant contended that in June of 1993, he departed the country and did not return until September of 1993. Claimant alleged that he was the only person authorized to make trades in the account and, while out of the country, he had no contact with Mahmood or anyone else at Thomas James.

Claimant alleged that upon returning to the country, he contacted Mahmood in order to sell 1,000 shares of Standard, which was trading at a price of \$26.00. Claimant contended that it was at this time that he discovered that Standard had been sold from his account without his authorization. Additionally, claimant alleged he also found that Mahmood executed various other unauthorized trades in his account.

Claimant alleged that Mahmood's actions constituted unauthorized trading, fraud, churning, and a breach of fiduciary duty. Claimant further contended that H.J. Meyers, Inc. ("Meyers"), due to the fact that it took over the assets and liabilities of Thomas James, should be held liable for Mahmood's actions as well as for a failure to supervise.

Respondent Meyers maintained that although it resides at the same address where Thomas James previously resided, it did not take over the assets and liabilities of Thomas James. Respondent Meyers further maintained that the claimant did in fact open an account on March 9, 1993 but was not the sole person authorized to make trades in the account. Respondent Meyers contended that Claimant had authorized others with whom he worked at Capital Management to engage in transactions under particular circumstances, including when Amanat was unavailable.

Respondent maintained that Amanat did purchase 1,000 shares of BPI and 1,000 shares of Standard in his account but was unaware of any instructions given to Mahmood regarding any purchases or sales. Respondent further maintained that it did not have sufficient knowledge of Amanat's travel and whether Amanat had contact with Mahmood while out of the country. Respondent Meyers contended that it did not have sufficient knowledge as to whether the trading that occurred in Amanat's account was unauthorized and denies that it engaged in any fraud, unauthorized trading or failure to supervise.

For Respondent Meyers' cross-claim against respondent Mahmood, Meyers alleged that Mahmood should be held liable for indemnification of any award or settlement that Meyers pays to the claimant. Respondent Meyers alleged that Mahmood owed Meyers a duty of honesty and loyalty which included only executing trades authorized and approved by the client.

RELIEF REQUESTED

Claimant requested:

1. An amount in excess of \$31,750.00 in compensatory damages;
2. An amount in excess of 95,252.00 in punitive damages;
3. Attorneys' fees and costs of the arbitration; and
4. Any other relief this panel deems just and appropriate.

Respondent Meyers requested:

1. The Statement of Claim be dismissed in its entirety; and
2. An award against Rizwan Mahmood for any amount which the panel may award Sharif Amanat and impose against Meyers or which Meyers may voluntarily pay to Amanat in settlement as well as costs and attorneys' fees incurred defending this action.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated April 17, 1996 the NASD was informed that Respondent Meyers had reached a settlement with the Claimant but would proceed with its Cross-Claim against Respondent Mahmood on the date of the hearing.

The arbitration panel made the following rulings concerning Respondent Rizwan Mahmood who did not file a Statement of Answer nor a Submission Agreement, and who also failed to appear at the evidentiary hearing conducted in this matter:

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondent was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Respondent pursuant to Section 12 of the NASD Code of Arbitration Procedure.
3. In view of (2) above, the panel found the Respondent was required to file with the NASD a Statement of Answer and a properly executed Submission Agreement pursuant to Section 25(b) of the NASD Code of Arbitration Procedure. In this regard, the panel found that the Statement of Claim was properly served upon Respondent, pursuant to Section 25(a) of the Code.
4. In addition, in accordance with Sections 21, 26 and 29 of the NASD Code of

Arbitration Procedure, the panel found that the NASD provided Respondent with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel therefore, determined to proceed with the hearing without Respondent, whose absence was unexcused.

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.

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. Rizwan Mahmood be and hereby is liable and shall pay to H.J. Meyers & Co., Inc. \$21,355.00 representing indemnity for the settlement with Sharif Amanat.
2. Rizwan Mahmood be and hereby is liable and shall pay to H.J. Meyers and Co., Inc. \$5,739.25 as reimbursement of attorney's fees.
3. Each party shall bear their respective costs.
4. All other claims be and hereby are denied.


FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee previously deposited by Respondent Meyers and have assessed the following forum fees:

1 Session x \$750.00 = \$750.00

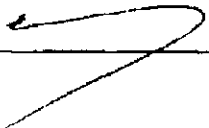
Third-party Respondent Rizwan Mahmood be and hereby is liable for the sum of \$750.00 representing the total amount of forum fees assessed.

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



Malcolm J. Irving
Industry Arbitrator

I, Malcolm J. Irving, do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: July 29, 1996

ARBITRATORS' SIGNATURES




Karimu F. Hill-Harvey, Esq.
Public Chairperson

I, Karimu F. Hill-Harvey, do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: July 29, 1996


Anne Cugliani
Public Arbitrator

I, Anne Cugliani, do hereby affirm that this is my decision in the above-captioned matter.



Date of Decision: July 29, 1996