

NASD REGULATION, INC. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John V. Harper
William M. and Elinor Harper
Cornelia A. Wise
Arthur F. Cohen

95-03946

Name of Respondents

Collner Higgins & Anderson, Inc.
Kenneth Darrell Arrington

REPRESENTATION

For Claimants John V. Harper, William M. and Elinor Harper, Cornelia A. Wise and Arthur F. Cohen ("Claimants") appeared William S. Weisman, Esq. and David Brodie, Esq. of the law firm Mandel, Simowitz, Weisman & Scherer located in Boca Raton, Florida.

For Respondents Collner Higgins & Anderson, Inc. ("CHA") and Kenneth Darrell Arrington ("Arrington") appeared Delmer C. Gowing, Esq. of the law firm Hertz, Schram & Saretsky located in Ocean Ridge, Florida.

CASE INFORMATION

The Statement of Claim was filed on August 15, 1995. Claimant John Harper's Submission Agreement was signed on July 10, 1995. Claimants William and Elinor Harper's Submission Agreement was signed on July 7, 1995. Claimant Cornelia A. Wise's Submission Agreement was signed on July 10, 1995. Claimant Arthur F. Cohen's Submission Agreement was signed on June 29, 1995.

A joint Statement of Answer was filed by Respondents CHA and Arrington on September 22, 1995. Respondent CHA's Submission Agreement was signed on October 26, 1995. Respondent Arrington's Submission Agreement was signed on October 26, 1995.

HEARING INFORMATION

Hearing Dates/Sessions:	October 10, 1996 -	Two Sessions
	October 11, 1995 -	Two Sessions
	February 5, 1997 -	Two Sessions
	February 6, 1997 -	Two Sessions
	February 7, 1997 -	One Session

The hearings were held at the offices of NASD Regulation, Inc. and at the Ritz Carlton located in Atlanta, Georgia.

CASE SUMMARY

Claimants stated CHA was a broker/dealer and a member of NASD, Inc. and that Arrington was a registered representative employed by CHA. Claimants maintained that, in July of 1993, they were all solicited by Arrington on behalf of CHA and that he had gained their trust because he had known them or their families for a number of years. Claimants asserted that Arrington told them that, because CHA had developed a method of trading "inside the spread", they would conservatively make a 36% annual return on their investments and that commissions would only be charged when the trades were profitable. Claimants further asserted that Arrington insisted that they allow him to exercise his discretion in managing their accounts including allowing him to purchase shares on margin. According to claimants, Arrington told them that he understood their long-term investment needs and that he would manage their accounts competently and protect their capital investments. Claimants contended that Arrington represented that with his investment management ability they "could not lose". Claimants further contended that, because of these representations, they opened accounts with the Respondents, provided substantial sums to invest and gave him discretionary authority over their accounts.

Claimants alleged that, in response to their concerns about losses reflected on their monthly statements, Arrington told them that the monthly statements were in error due to "bugs in the computer" and that they were making money. Claimants further alleged that Arrington later admitted that there had been losses but they were the result of a fraudulent scheme by CHA. Claimants also alleged that Arrington then told them that he had figured out CHA's scheme and claimants would not lose any more money.

Claimants asserted that in March of 1994, with out their prior knowledge or consent, Arrington purchased Media Vision ("MV"). Claimants further asserted that when Respondents sold their position in the stock in May 1994, it had lost over 90% of the original investment. Claimants contended that Arrington then convinced them to transfer all of the remaining funds in their accounts to a limited partnership called American Traders Hedge Fund, Ltd. ("American"). Claimants further contended that Arrington told them that American would result in substantially greater profits since their funds would be co-mingled and traded with additional funds resulting in even greater trading efficiencies. Claimants also contended that American was revoked by the State of Florida and that it never conducted any legitimate business and that all of the funds invested in it were either lost or stolen. Claimants maintained the only information they received about the fund was a letter from Arrington which stated the fund was up 4% for its first quarter.

Claimants alleged that their accounts were unreasonably and excessively traded and that trades were made that were not suitable for their investment objectives, low risk, to provide for their retirement. Claimants further alleged that at no time did any of the respondents ever discuss the risks associated with their purchases and that they were repeatedly assured that there was no risk and that they should allow Arrington complete discretion. Claimants also alleged that the actions of the Respondents were sufficiently egregious to justify punitive damages.

CHA and Arrington ("respondents"), maintained that CHA is a registered broker-dealer in good standing with the Securities and Exchange Commission and is a member firm in good standing with the NASD and that Arrington is a registered representative employed by CHA. Respondents further maintained that each of the claimants had a substantial net worth and prior trading experience and that they had conducted business with Arrington through other brokerage firms prior to establishing their CHA accounts. Respondents also maintained that each of the claimants delegated complete trading authority

and discretion to Arrington and signed margin agreements authorizing Arrington to borrow funds on margin.

Respondents asserted that the claimants were never pressured into giving Arrington discretionary authority over their accounts, told that they could not lose money on their investments or that they would conservatively make a 36% annual profit, or that their monthly statements were incorrect due to "bugs in the computer". Respondents further asserted that the claimants were well aware of the risk and sought to benefit from Arrington's aggressive investment strategy with the hope of generating substantial profits. Respondents also asserted they were in frequent and constant communication with the claimants. Respondents alleged that MV's losses were caused by an investigation by the Securities and Exchange Commission which they could not have anticipated. Respondents further alleged that American was formed and managed by Arrington and was intended to trade actively and to frequently take positions in over the counter NASDAQ traded stocks as well as stocks traded on the American and New York Stock Exchanges. Respondents also alleged that American clearly disclosed that the investment involved significant risk and was only for investors with substantial liquid net worth. Respondents contended that each of the Claimants who invested in American executed subscription documents attesting to their knowledge and understanding of the investments' risks. Respondents further contended that American's registration did lapse for a period of time but that this was due to an innocent clerical error and was not the result of a "fraud" or a "sham".

Respondents maintained that, prior to filing this claim, claimants solicited Arrington to testify against CHA in a separate action filed before the NASD by Dr. Samuel Rice ("Rice"), a medical practice partner of claimant William Harper. Respondents further maintained that, in return for his testimony, claimants would arrange to have Arrington dismissed as a respondent in the Rice action and would establish him as a broker-dealer in Atlanta, Georgia and pay him a reasonable salary.

RELIEF REQUESTED

Claimants John V. Harper, William M. and Elinor Harper, Cornelia A. Wise, and Arthur F. Cohen requested actual damages in excess of \$100,000.00; punitive damages; treble damages; and attorney's fees and costs.

Respondents Collner Higgins & Anderson, Inc. and Kenneth Darrell Arrington requested dismissal with prejudice of Claimants's Statement of Claim; attorneys' fees and costs of arbitration; that the claims of Claimants Cohen and Wise be severed; and for such other relief as the arbitrators deem proper.

OTHER ISSUES CONSIDERED & DECIDED

Respondents' Motion to Sever the claims of claimants Cohen and Wise was denied by administrative decree. Respondents' claims against Ernst & Company were settled and claimants' claim against them was dismissed.

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 and post hearing submissions the undersigned arbitrators has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Collner Higgins & Anderson, Inc. and Kenneth Darrell Arrington are jointly and severally liable to Claimant Arthur Cohen in the amount of \$42,000.00; Claimant John Harper in the amount of \$27,000.00; and Claimant Eleanor Harper in the amount of \$118,000.00.
2. All requests for punitive damages and attorneys fees are denied.
3. All other claims for relief are denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200.00 non-refundable filing fee previously deposited by the Claimants. Furthermore, the following forum fees are assessed:

9 hearing sessions x \$750.00	= \$6,750.00
Minus Claimants' \$750.00 deposit	= <u>\$ 750.00</u>
Total outstanding	= \$6,000.00

The panel has assessed the entire cost of this proceeding against respondents jointly and severally for the sum of \$6,750.00 representing the total amount of forum fees assessed. Respondents are jointly and severally liable and shall pay to NASD Regulation, Inc. the sum of \$6,000.00 which represents the total outstanding forum fee and shall be jointly and severally liable to pay to Claimants the sum of \$750.00 as reimbursement of the hearing session deposit. Further respondents hereby are jointly and severable liable to and shall pay claimant the sum of \$200.00 as reimbursement of the non-refundable filing fee.

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

ARBITRATORS' SIGNATURES


Joel S. Arogeti, Esq.
Public Chairperson

Jo Lanier Meeks, Esq.
Panelist

John R. Camp, Jr., Esq.
Panelist

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Joel S. Arogeti, Esq.
Public Chairperson

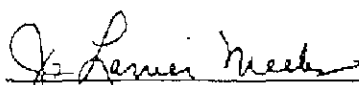
Jo Lanier Meeks, Esq.
Panelist

John R. Camp, Jr., Esq.
Panelist

DATE OF DECISION: March 14, 1997

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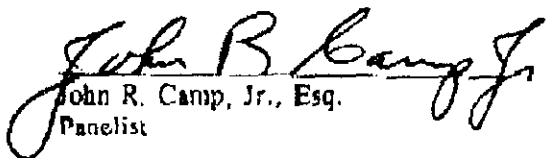
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