

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Louis F. Carolla

95-05739

Name of Respondents

Kevin Shaughnessy
Penn Capital Financial Services

Third Party Respondent

Donald L. Norman

REPRESENTATION

Claimant Louis F. Carolla ("Claimant") appeared *pro se*.

Respondent Kevin Shaughnessy ("Shaughnessy") appeared *pro se*.

Respondent Penn Capital Financial Services ("Penn Capital") did not appear.

Third Party Respondent Donald L. Norman ("Norman") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed December 6, 1995.

Claimant's Uniform Submission Agreement was signed November 21, 1995.

Shaughnessy's Statement of Answer was filed January 10, 1996.

Shaughnessy's Third Party Claim against Donald L. Norman was filed June 24, 1996.

Shaughnessy's Uniform Submission Agreement was filed January 12, 1996.

Respondent Penn Capital did not file an Answer nor an executed agreement to arbitrate.

Respondent Norman did not file an Answer to the Third Party Claim nor an executed agreement to arbitrate.

HEARING INFORMATION

Hearing Date/Sessions: April 10, 1997/two sessions

Hearing Location: Marriott Hotel
Cleveland, OH

CASE SUMMARY

Claimant alleged, among other things, that Respondents Penn Capital Financial Services and Kevin Shaughnessy (collectively "Respondents") misrepresented material facts; engaged in unauthorized trades in Claimant's account, including trading on margin; and churned Claimant's account for their benefit. Claimant alleged that Respondents misrepresented the amount of commission which would be added for each transaction executed in Claimant's account. In addition, Claimant alleged that on July 25, 1995, Shaughnessy advised Claimant to sell 300 shares of PDTI stock because Claimant was a shareholder of record and entitled to a 3 for 2 stock split, or an additional 150 shares. Claimant alleged that on October 16, 1995, Shaughnessy advised Claimant that he did not have those shares and that he would not be receiving the additional shares as originally indicated. Claimant further alleged that there were four transactions of JJAX stock that were executed between June 28, 1995 and July 6, 1996 which were not authorized by Claimant. Claimant asserted that Shaughnessy called after the trades were executed to advise Claimant that two of the transactions were made in error but that as Claimant had made a small profit, to ignore it. Claimant alleged that Respondents failed to sell the stock which were unauthorized and/or in error. Claimant also alleged that he had never signed a margin agreement and that the signature on the margin agreement on file with J.W. Charles, the clearing firm, was forged. Claimant further asserted that based on the misrepresentations of Respondents, transactions were executed in Claimant's account more than Claimant would normally have done. Claimant alleged that the excessive trading was done to generate commissions for Respondents and not for the benefit of Claimant. Claimant alleged that Respondents' actions caused him to suffer losses.

Respondent Shaughnessy denied all allegations of wrong doing as asserted in the Statement of Claim. Shaughnessy maintained that he first contacted Claimant after Claimant's previous broker, Third Party Respondent Norman, left Respondent Penn Capital's employment in May 1995. Shaughnessy maintained that Claimant insisted from the beginning that he wanted Shaughnessy to pursue an aggressive trading strategy at Penn Capital because Claimant had a large portion of his assets in conservative mutual funds through his employer. In addition, Shaughnessy maintained that Claimant also wanted to invest money that Claimant had put aside for his daughter's college tuition in aggressive trading. Shaughnessy maintained that he informed Claimant that an aggressive strategy had a higher element of risk and Claimant said that he understood that. Shaughnessy maintained that he never told Claimant that Shaughnessy had any insider information nor has Shaughnessy ever invested his own monies in any of the securities such as Claimant referred to in the Statement of Claim.

Shaughnessy maintained that he charged Claimant a commission rate lower than Penn Capital recommended because Claimant insisted that Norman had charged a lower rate but that Claimant understood that the lower rate was just until Shaughnessy proved his ability to be successful in the management of Claimant's account. Shaughnessy maintained that after several months of successful trading, he increased his commission to the standard rate recommended by Penn Capital, informed Claimant of that fact, and Claimant had no complaint. Shaughnessy maintained that Carolla was never misinformed or mislead about the commissions charged to his account.

Shaughnessy maintained that he recommended Claimant sell his position in PDTI because the stock had been very strong and it appeared due for a pull back. Shaughnessy maintained that Claimant was informed that he would not be entitled to any split shares even though he was a shareholder of record. Shaughnessy maintained that he suggested that Claimant also take a position in JJAX and although it was very speculative, Claimant readily agreed. Shaughnessy maintained that through a series of errors at either Penn Capital or J.W. Charles the initial trade was duplicated and when Claimant went to sell the extra shares, that transaction was also duplicated, so Shaughnessy repurchased the shares at Claimant's

request. Shaughnessy maintained that although Claimant frequently asked Shaughnessy's opinion about whether he should or should not sell JJAX, Claimant never gave Shaughnessy an authorization to sell JJAX. In addition, Shaughnessy maintained that when he informed Claimant that a recommended security, R.F. Management, could not be sold in Ohio, Claimant sent Shaughnessy correspondence changing his account records to show Claimant as a resident of Pennsylvania, where the security could be sold.

Shaughnessy maintained that Claimant decided to trade on margin for short term trades after a long discussion about the benefits and risks of trading on margin. Shaughnessy maintained that the first trade on margin was the purchase of 100 shares of CBS. Shaughnessy maintained that he informed Claimant that he did not have the equity to buy the stock outright so Claimant authorized Shaughnessy to buy the stock on margin. Shaughnessy maintained that Claimant knew that he was being charged interest on the margin account.

Shaughnessy maintained that Claimant was a short term trader who was interested in trading profits and that Claimant would rebuff any recommendations of long term investments. Shaughnessy maintained that Claimant's account was not traded excessively for the type of trading Claimant did and in light of Claimant's trading strategy. Shaughnessy maintained that Claimant suffered no damages as a result of Shaughnessy's management.

Respondent Penn Capital did not file an Answer.

RELIEF REQUESTED

Claimant requested damages in the amount of \$10,051.00 plus punitive damages in the amount of \$31,153.00 plus the costs of this arbitration.

Respondent Shaughnessy requested that the Statement of Claim be dismissed, that this arbitration be expunged from his CRD record and that Claimant reimburse Shaughnessy for his expenses including legal fees.

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.

The panel considered Shaughnessy's Motion to Dismiss and Claimant's Response thereto, and deferred the Motion.

Respondent Shaughnessy withdrew his Third Party Claim against Donald Norman.

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. That Respondent Penn Capital Financial Services, Inc. is liable to and shall pay to Claimant the sum of \$754.87.
2. That the claims as to Respondent Shaughnessy are denied.
3. That the claim for punitive damages is denied.
4. That each party shall bear its own costs and expenses.
5. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10334(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

2 sessions x \$400.00 = \$800.00

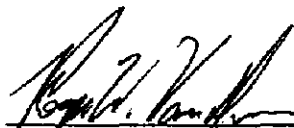
Forum Fees are assessed at \$400.00 to Claimant and \$400.00 to Respondent Penn Capital Financial Services. Claimant is to receive credit for the \$400.00 hearing session deposit previously submitted to the NASD Regulation, leaving no further assessment due from Claimant. Respondent Penn Capital Financial Services has a net assessment due of \$400.00

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

4/22/97



Roger W. Van Deusen, Chairman
Public Arbitrator

Edward F. Siegel
Public Arbitrator

Henry Ott-Hansen
Industry Arbitrator

Date Decision Served by NASD Regulation:

May 7, 1997

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4/18/97

Roger W. Van Deusen, Chairman
Public Arbitrator

Edward F. Siegel
Public Arbitrator

Henry Ott-Hansen
Industry Arbitrator

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CONCURRING ARBITRATORS' SIGNATURES

Roger W. Van Deusen, Chairman
Public Arbitrator

Edward F. Siegel
Public Arbitrator

April 24, 1997

Henry Ott-Hansen
Henry Ott-Hansen
Industry Arbitrator

Date Decision Served by NASD Regulation:

May 7, 1997