

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Jerrold B. Feldman

Claimant

NASD Arbitration

v.

No. 96-00016

Brown & Company Securities Corporation

Respondent

REPRESENTATION OF PARTIES

Jerrold B. Feldman ("**Claimant**") was represented by Martin R. Deutsch, Esq., Singer & Deutsch, San Jose, California.

Brown & Company Securities Corporation ("**Respondent**") was represented by Susan M. Boudrot, Esq., Brown & Company Securities Corporation, Boston, Massachusetts.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about January 2, 1996. Claimant's Submission Agreement was signed on December 8, 1996.

Respondent Brown & Company Securities Corporation's Statement of Answer was filed on or about February 26, 1996. Respondent's Submission Agreement was signed on February 22, 1996.

HEARING INFORMATION

A telephonic pre-hearing conference was held on June 20, 1996.

The hearing was held on July 10, 1996 in San Francisco, California for a total of 2 sessions.

CASE SUMMARY

Claimant alleged that Respondent allowed trading to take place in his account without first checking Claimant's account for sufficient equity. Claimant further alleged that he was incorrectly approved for Level 6 trading.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically argued Claimant was an experienced investor who regularly traded options and failed to cover a

margin call. Respondent further argued that Claimant's option trading level was raised at his own request and based on his own representations of net worth and experience. Respondent further alleged that most, if not all, of Claimant's losses were the result of his unsuccessful trading activity, not the result of Respondent's margin policy.

RELIEF REQUESTED

Claimant requested an award in the amount of \$8,234.00 plus treble damages. The total request is for \$24,932.00 plus interest and costs. Claimant also requested an unspecified amount of punitive damages.

Respondent requested that the claims asserted against it be denied in their entirety, and that Respondent be awarded attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent shall pay to Claimant the sum of \$900.24.
2. Claimant's request for treble damages and punitive damages is denied.
3. Each side must bear its own attorney's fees and costs.

FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each prehearing conference, if any. There was 1 pre-hearing session x \$300 plus 2 sessions x \$300 = \$900 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to § 43(c) of the Code of Arbitration Procedure, the parties shall divide the forum fees 50%-50%, with the Claimant bearing 50%, and the Respondent bearing 50%.

Total Fees
1 Pre-hearing Session @ \$300.00 = \$300.00

2 Hearing Sessions @ \$300.00 -	\$600.00
Total	<u>\$900.00</u>

Claimant's 1/2 share	\$450.00
Claimant's credit for deposit	<u>\$300.00</u>
Claimant's balance	\$150.00

Respondent's 1/2 share	<u>\$450.00</u>
Respondent's Balance	\$450.00

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$100 and shall **retain** as forum fees the hearing session deposit in the amount of \$300 previously deposited with the NASD by the Claimant Jerrold B. Feldman.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by Brown & Company Securities Corporation.

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

Dated:

Robert L. Gorman
Robert L. Gorman, Esq.
Public Arbitrator, Presiding Arbitrator

July 29, 1996

Date Served: 07/31/96