

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Names of Claimants

Frank and Kathleen Ihlenfeld

96-00578

Names of Respondents

J.W. Charles Securities, Inc.
Guy Drake

REPRESENTATION

For Claimants Frank and Kathleen Ihlenfeld ("Mr. and Mrs. Ihlenfeld"): Russell Silverglate, Esq. of Dickenson Murdock Rex and Sloan, Boca Raton, Florida.

For Respondents J.W. Charles Securities, Inc. ("J.W. Charles") and Guy Drake ("Drake") : James M. Kaplan, Esq. and Robert Hudson, Esq. of Wilson Elser Moskowitz Edelman & Dicker, Miami, Florida.

CASE INFORMATION

Statement of Claim filed: February 7, 1996.

Claimants' Submission Agreement signed: June 28, 1996.

Joint Statement of Answer filed by Respondents J.W. Charles and Drake: April 29, 1996.

Respondent J.W. Charles' Submission Agreement/Corporate Acknowledgment signed: May 10, 1996.

Respondent Drake's Submission agreement signed: May 8, 1996

HEARING INFORMATION

On October 20, 22, 27, 1997 and December 12 and 19, 1997 hearings lasting ten (10) sessions were conducted in Fort Lauderdale, Florida.

CASE SUMMARY

Claimants, husband and wife, alleged that Mr. Ihlenfeld is a 48 year old high school graduate and an unemployed, nearly unskilled worker who is severely disabled, both physically and psychologically as a result of three automobile accidents; that because of Mr. Ihlenfeld's injuries he cannot consistently earn a living and, therefore, lives off the principal and interest from his savings and the money he has

been paid as a result of his accidents; that in order to assure that he has enough money to live on, Mr. Ihlenfeld always holds his assets in high interest money market accounts where the principal is safe and available to him. Claimants further alleged that in 1990 Mr. Ihlenfeld opened a non-trading, high interest money market account with Respondent J.W. Charles and that Respondent Drake was assigned as his broker; that over the next few years J.W. Charles and Drake mismanaged Claimants' life savings and caused them to make numerous unsuitable investments in thinly traded, thinly capitalized companies either touted by Drake and J.W. Charles or in which J.W. Charles was making a market. Claimant maintained that Mr. Ihlenfeld told Drake that he was taking his advice and investing in the companies he was suggesting based upon Drake's assurance that Claimants' money was safe and being prudently invested. Claimants further maintained that by the end of 1995, as a result of the actions of Respondents, Claimants' account had lost over \$44,000.00.

Respondents alleged that Claimant Frank Ihlenfeld represented to Respondents that he had substantial prior investment experience, a net worth of \$500,000.00, and an annual income of \$60,000.00; that Claimants' investment objectives as contained on the new account documents and options suitability questionnaires, which Claimants signed, included trading profits and speculation; that based upon Mr. Ihlenfeld's representations as to his investment objectives, income, net worth and prior experience, none of the transactions in Claimants' account were unsuitable. Respondents further alleged that Frank Ihlenfeld also represented on numerous occasions that he fully understood all ramifications of margin trading; that the vast majority of transactions in Claimants' accounts were unsolicited; that Frank Ihlenfeld initiated some transactions and maintained others, against Respondents' advice. Respondents maintained that Claimants failed to mitigate their losses on numerous occasions, thus, any losses Claimants may have suffered are the result of their own actions or inaction, and not any wrongdoing on the part of the Respondents. Additionally, Respondents asserted affirmative defenses of estoppel, waiver, ratification, contributory negligence and that the Economic Loss Doctrine bars any claim sounding in tort.

RELIEF REQUESTED

Claimants requested judgment against the Respondents, jointly and severally, as follows:

- a. actual damages in excess of \$48,000.00 as a result of the unsuitable investments purchased for and unauthorized margin trades made in Claimants' account;
- b. punitive damages in connection with Respondents' reprehensible conduct;
- c. all of Claimants' costs, expenses and disbursements, including reasonable attorneys' fees and expert witness fees; and,
- d. for such other relief as the arbitration panel deemed just and proper.

Respondents requested an award dismissing all claims against them and awarding them the costs and disbursements of this proceeding and their reasonable attorneys' fees together with such other, different or further relief as the panel deemed just, proper and equitable.

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 NASD Regulation, Inc.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents J.W. Charles and Drake are found liable, jointly and severally, and shall pay to the Claimants the sum of \$4,270.00 plus pre-judgment interest at the rate of 9% per annum from November 25, 1991 to December 19, 1997.
2. Claimants' requests for punitive damages, costs, expenses and disbursements, reasonable attorneys' fees and expert witness fees are hereby denied.
3. Respondents' requests for costs, disbursements and reasonable attorneys' fees are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure ("Code") the arbitration panel has assessed forum fees in the amount of \$4,000.00 (ten (10) hearing sessions x \$400.00).

1. Claimants are assessed forum fees in the amount of \$2,000.00 payable to NASD Regulation, Inc.
2. Respondents J.W. Charles and Drake are assessed forum fees, jointly and severally, in the amount of \$2,000.00 payable to NASD Regulation, Inc.
3. Claimants shall pay to NASD Regulation, Inc. the claim filing fee of \$120.00.
4. Respondent J.W. Charles shall pay to NASD Regulation, Inc. the outstanding member surcharge of \$200.00 pursuant to Rule 10333 of the Code.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

_____/s/_____
Robert D. Herschman, Esq.

Public/Chair

_____/s/_____
Linda M. Granata, Esq.

Public/Panelist

_____/s/_____
Irving I. Hanzman

Industry/Panelist

Date of Decision: January 22, 1998