

AWARD

NASD Regulation, Incorporated Office of Dispute Resolution

In the Matter of Arbitration Between

Mark P. Marshall,

Claimant,

and

No. 96-00776

J.E. Liss & Co., Inc., Jerome E. Liss, David F. Bahr, and
Tariq Kahn,

Respondents.

REPRESENTATION OF PARTIES

Claimant Mark P. Marshall ("Mr. Marshall") was represented by John E. Dees, Jr., Esquire, located in Dallas, Texas.

Respondent J.E. Liss & Company, Incorporated ("J.E. Liss"), Jerome E. Liss ("Mr. Liss") and Tariq Kahn ("Mr. Kahn") were represented by Michael H. Schaalman, Esquire of Quarles & Brady, located in Milwaukee, Wisconsin.

Respondent David F. Bahr ("Mr. Bahr") was neither represented nor made an appearance in this matter.

CASE INFORMATION

Mr. Marshall's Statement of Claim was filed on or about February 22, 1996.

Mr. Marshall's Submission Agreement was signed on December 21, 1995.

J.E. Liss, Mr. Liss and Mr. Kahn's Statement of Answer was filed on or about July 8, 1996.

J.E. Liss, Mr. Liss and Mr. Kahn did not submit submissions to arbitration.

Mr. Bahr did not submit a Statement of Answer or a submission to arbitration.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: September 9, 1997 for two (2) sessions; September 10, 1997 for two (2) sessions; September 11, 1997 for three (3) sessions; and September 12, 1997 for two (2) sessions.

The hearing was held in Dallas, Texas.

CASE SUMMARY

Mr. Marshall brought this action against J.E. Liss, Mr. Liss, a registered principal of J.E. Liss, Mr. Bahr, who allegedly acted as a broker for J.E. Liss, and Mr. Kahn, who was also a registered representative of J.E. Liss, for damages allegedly resulting from unauthorized trades, misrepresentation and omission of material facts, breach of fiduciary duty, common law fraud, and statutory fraud. According to Mr. Marshall, Mr. Bahr, who was not a registered representative, engaged in numerous unauthorized transactions that involved large numbers of highly speculative, low priced securities, often Canadian penny stocks. Mr. Marshall contended that although Mr. Liss and Mr. Kahn were shown as his broker of record on the account, he almost exclusively dealt with Mr. Bahr. Mr. Marshall asserted that Mr. Bahr often violated express instructions to sell certain securities and, when asked, would claim that the trade had occurred when it had not. According to Mr. Marshall, his losses included the following: 50,000 shares of International Capri Resources purchased at a total cost of \$93,750.00 and sold on December 14, 1995 at an aggregate price of \$33,018.26, resulting in a loss of \$60,731.74; and 17,000 shares of U.S. Health Tech, Incorporated units purchased at an aggregate cost of \$141,687.50, 1,500 shares of which have been sold for aggregate proceeds of \$6,600.00, resulting in a realized loss of \$6,431.25 and an unrealized loss on the remaining shares of \$72,468.50. Mr. Marshall speculated that J.E. Liss acted as market maker for the Canadian Penny stocks and was thereby required to make a disclosure, which was not made and for which J.E. Liss failed to obtain the requisite agreements signed by Mr. Marshall. Mr. Marshall also claimed that Mr. Bahr fraudulently represented that various securities were sold at certain prices, which included: 50,000 shares of Telmed at \$1.50 on October 10, 1995; 8,000 shares of Telmed on October 9, 1995 at \$1.125; 10,000 shares of International Capri on October 5, 1995 at \$3.25; 5,000 shares of International Capri on October 3, 1995 at \$3.25; and 2,000 shares of NAL Financial on September 28, 1995 at \$17.125. In addition, according to Mr. Marshall, Mr. Bahr and Mr. Kahn made misrepresentations in connection with the purchase of U.S. Health Tech.

J.E. Liss, Mr. Liss and Mr. Kahn denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. They stated that Mr. Marshall's relationship with Mr. Bahr was so profitable for Mr. Marshall that he followed Mr. Bahr as he moved from broker-dealer to broker-dealer, and continued to give Mr. Bahr orders even though Mr. Marshall knew that Mr. Bahr was no longer a registered broker. J.E. Liss and Mr. Liss contended that Mr. Bahr has never been an employee, broker, or agent of either

J.E. Liss or Mr. Liss, he never received any compensation from the firm, and he was never authorized to solicit trades or execute them through any agent of the firm. According to J.E. Liss and Mr. Liss, at no time while Mr. Marshall maintained an account at J.E. Liss was his account operated by Mr. Bahr. They argued that Mr. Marshall is not entitled to any damages because: (1) he knew that Mr. Bahr was not a licensed broker; (2) he authorized and ratified each and every transaction in the account he maintained at J.E. Liss; and (3) the purchases and sales in Mr. Marshall's account were suitable for him and met his investment objectives. J.E. Liss, Mr. Liss and Mr. Kahn finally asserted that Mr. Marshall failed to state a claim for which relief can be granted.

RELIEF REQUESTED

Mr. Marshall, pursuant to §§ 33 and 34 of the Texas Securities Act and § 27.01 of the Texas Business and Commerce Code, requested an award for: actual damages of \$254,750.00; the total amount of commissions and other compensation paid to respondents of at least \$100,000.00; interest on such amounts at the statutory rate; costs and expenses incurred in this matter; legal fees; and punitive damages of at least three times the amount of actual losses.

J.E. Liss, Mr. Liss and Mr. Kahn requested that the claims asserted against them be dismissed and that they be awarded their costs, disbursements, and fees incurred in defending these claims.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made by/on behalf of claimant Mark P. Marshall, the undersigned arbitrators have determined that respondent David F. Bahr has not been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that respondent David F. Bahr had not received due notice of the hearing as required under § 10318 of the Code and is not bound by the determination of the arbitration panel on the issues submitted.

Respondents J.E. Liss & Company, Incorporated, Jerome E. Liss and Tariq Kahn did not file with NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration, but are required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

On or about June 20, 1996, claimant Mark P. Marshall filed a motion to preclude respondents J.E. Liss & Company, Incorporated, Jerome Liss, and Tariq Kahn from presenting any facts or defenses at the hearing in this matter allegedly due to said respondents' lack of timeliness in submitting their Statement of Answer. After careful consideration of this motion and Liss & Company, Incorporated, Jerome Liss, and Tariq Kahn's response thereto, the panel of

arbitrators denied the motion.

On or about July 15, 1996, claimant Mark P. Marshall dismissed, without prejudice, respondent Tariq Kahn from this matter. Mr. Kahn did appear and testify at the hearing.

At the conclusion of claimant Mark P. Marshall's case, respondents J.E. Liss & Company, Incorporated and Jerome E. Liss moved for dismissal of the case. The panel of arbitrators denied this motion.

Near the conclusion of the hearing in this matter, claimant Mark P. Marshall orally deleted any claim under any law for loss due to the securities traded being "designated securities" (i.e., penny stocks).

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 original(s) remain on file with the NASD Regulation, Incorporated Office of Dispute Resolution.

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. J.E. Liss & Company, Incorporated is liable for and shall pay Mark P. Marshall compensatory damages of \$10,000;
2. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were nine (9) hearing sessions x \$1,000 = \$9,000 in forum fees. Pursuant to § 10332(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 § 10332(c) of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$250 and shall retain as forum fees the hearing session deposit of \$1,000 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Mark P. Marshall. Respondent J.E. Liss & Co., Inc. is liable for and shall reimburse Claimant Mark P. Marshall, for the \$1000.00 hearing session deposit and \$250.00 filing fee he previously deposited.

Respondent J.E. Liss & Co. is liable for and shall pay NASD Regulation, Incorporated Office of Dispute Resolution forum fees of \$8000.00 (= \$9000.00 total forum fees - \$1000 hearing session deposited by Claimant Mark P. Marshall.)

Pursuant to § 10333 of the Code, J.E. Liss & Co. is liable and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution the remaining \$62.50 of its \$500.00 non-refundable member surcharge. (J.E. Liss & Co. previously deposited \$437.50 of its member surcharge with the NASD Regulation, Incorporated Office of Dispute Resolution.)

Respondent J.E. Liss & Co. is liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution postponement fees in the amount of \$1000.00.

Fees are payable to the NASD Regulation, Incorporated Office of Dispute Resolution.

Concurring Arbitrators' Signatures

/s/ John R. Preston October 15, 1997

John
R. Preston, Esquire Dated:
Chairperson
Public Arbitrator

/s/ Harry Weisbrod October 16, 1997

Harry Weisbrod Dated:
Panelist
Public Arbitrator

/s/ Jack R. Settles October 16, 1997

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R. Settles
Panelist
Industry Arbitrator

Dated: _____ Jack