

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

**Wilbert Life Insurance Company
and Grace Cemetery Association
Perpetual Care Corp.,**

Claimants,

v.

No. 96-01458

**Trading Desk, Inc., Traders and Dealers, Inc.,
Jerry W. Manning, James H. Beckemeyer, and
Trading Desk of Memphis, Inc.,**

Respondents.

REPRESENTATION OF PARTIES

Claimants Wilbert Life Insurance Company and Grace Cemetery Association Perpetual Care Corp. ("Claimants") were represented by Judy Y. Barrasso, Esq. and Thomas M. Flanagan, Esq. of Stone, Pigman, Walther, Wittmann & Hutchinson, L.L.P. located in New Orleans, Louisiana.

Respondents Trading Desk, Inc. ("TDI") and Jerry W. Manning ("Manning") were represented by Larry M. Roedel, Esq. of Roedel, Parsons, Hill & Koch located in Baton Rouge, Louisiana.

Respondent Traders and Dealers, Inc. ("T&D") was represented by William R. Rapson, Esq. of Robinson, Waters, O'Dorisio and Rapson located in Denver, Colorado. Respondent T&D was previously represented by Larry M. Roedel, Esq. of Roedel, Parsons, Hill & Koch located in Baton Rouge, Louisiana.

Respondent James H. Beckemeyer ("Beckemeyer") appeared pro se. Respondent Beckemeyer was previously represented by Russell C. Winston, Esq. and Bettye Bedwell, Esq. of Memphis, Tennessee.

Respondent Trading Desk of Memphis, Inc. ("TDM") did not appear in this matter and was unrepresented.

CASE INFORMATION

The Statement of Claim was filed on or about April 2, 1996.

Claimants' Submission Agreement was signed on April 1, 1996 by John W. Wilbert, Jr.

The Joint Statement of Answer of Respondents TDI, T&D, and Manning was filed on or about April 30, 1996.

Respondent TDI did not file a properly executed Submission Agreement.

Respondent T&D's Submission Agreement was signed on May 21, 1996 by Jerry W. Manning, President of T&D.

Respondent Manning's Submission Agreement was signed on May 21, 1996.

Respondent Beckemeyer's Statement of Answer was filed on or about July 29, 1996.

Respondent Beckemeyer's Submission Agreement was filed on or about August 5, 1996.

HEARING INFORMATION

A telephonic pre-hearing conference was held on April 23, 1997 for one (1) session and July 15, 1997 for one (1) session.

The Hearing was held on September 3, 1997 for three (3) sessions in New Orleans, Louisiana.

CASE SUMMARY

Claimants brought this claim to recover damages as a result of Respondents' allegedly unsuitable trading of certain derivative securities known as inverse floaters, as well as for their nondisclosure of material information in connection with the inception and operation of margin accounts. Claimants contended that in approximately September or October of 1990, Claimants began investing money with Respondents TDI and TDM, through their agent and broker, Respondent Beckemeyer. Claimants represented that they were conservative and unsophisticated investors whose goals were income and security of principal. Claimants asserted

that the inverse floaters purchased by Respondent Beckemeyer for Claimants were exotic and highly volatile financial instruments which were totally unsuitable for Claimants. Claimants also maintained that Respondents Beckemeyer, TDI, and TDM churned or excessively traded Claimants' securities account in complete disregard of Claimants' investment objectives. Claimants alleged that they sustained tremendous losses in April 1994 when an increase in short-term interest rates had a dramatic effect on the value of inverse floaters in which their portfolio were heavily concentrated.

Respondents TDI, T&D, Manning, and Beckemeyer (collectively referred to as "Respondents") denied all liability to Claimants. Respondents raised various affirmative defenses, including, but not limited to: (1) The Statement of Claim fails to state a claim for which relief can be granted; (2) Any losses Claimants suffered were proximately caused by John W. Wilbert by assuming a known quantity and volume of risk; (3) The claims are barred, in whole or in part, by the principals of waiver, ratification, and/or estoppel; (4) The claims are barred, in whole or in part, by applicable statutes of limitations, prescriptive periods and/or laches; (5) The claims are barred, in whole or in part, by the failure of John W. Wilbert to exercise due care or due diligence; and (6) Any decline in price or value concerning the investments was not caused by Respondents, but rather was caused by economic market conditions.

Respondent TDM did not file a Statement of Answer.

RELIEF REQUESTED

Claimants requested compensatory and consequential damages in excess of \$1 million, punitive damages, interest, attorneys' fees, costs, and any other relief to which they may be entitled by law or equity.

Respondents TDI, T&D, Manning, and Beckemeyer requested that the Statement of Claim be dismissed in its entirety with prejudice, with all costs to be borne by Claimants, and that attorney fees be granted to them as a result of having to defend these claims.

OTHER ISSUES CONSIDERED & DECIDED

Shortly after the commencement of these proceedings, Respondent Beckemeyer filed for bankruptcy protection resulting in a stay of the proceedings as to him. Subsequently, Hon. G. Harvey Bosswell of the United States Bankruptcy Court granted Claimants' motion for relief from the automatic stay and ordered that this matter proceed to arbitration pursuant to the executed arbitration agreement.

Claimants reached a settlement with Respondents Trading Desk, Inc., Traders and Dealers, Inc., Jerry W. Manning prior to hearing.

The undersigned arbitrators have determined that Respondent TDM 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 TDM has not received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would not proceed with respect to the Claimants' claims against Respondent TDM pursuant to §10318 of the Code.

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 NASD Regulation, Inc. 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) That Respondent James H. Beckemeyer is hereby liable for and shall pay to Claimants Wilbert Life Insurance Company and Grace Cemetery Association Perpetual Care Corp. compensatory damages in the amount of Four Hundred Eighty Eight Thousand One Hundred Sixty Six Dollars and No Cents (\$488,166.00), plus interest at the Louisiana statutory rate, which shall begin to accrue the date this award is served and shall continue to accrue until the date this award is paid in full;
- (2) That Respondent James H. Beckemeyer is hereby liable for and shall pay to Claimants Wilbert Life Insurance Company and Grace Cemetery Association Perpetual Care Corp. punitive damages in the amount of Twenty Five Thousand Dollars and No Cents (\$25,000.00). The panel concluded that the authority for an award of punitive damages exists under the law of the State of Louisiana;

- (3) That Respondent James H. Beckemeyer is hereby liable for and shall pay to Claimants Wilbert Life Insurance Company and Grace Cemetery Association Perpetual Care Corp. attorney fees in the amount of Two Hundred Twenty Four Thousand Seven Hundred Ninety Nine Dollars and Thirteen Cents (\$224,799.13). The panel concluded that the authority for an award of attorney fees exists under the law of the State of Louisiana;
- (4) The panel finds that Respondent James H. Beckemeyer is guilty of securities fraud within the meaning of Rule 10b-5 of the Securities and Exchange Act of 1934. The panel also finds that Respondent James H. Beckemeyer breached his fiduciary obligations to his customers; and
- (5) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically addressed and enumerated are hereby dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each hearing session before a single arbitrator. Pursuant to §10332(b) of 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.

There were two (2) pre-hearing sessions x \$300 = \$600 in forum fees. There were three (3) hearing sessions x \$1,000 = \$3,000 in forum fees. Total forum fees = \$3,600.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$250 and shall refund the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants.

Pursuant to §10332(c) of the Code, Respondent Beckemeyer is liable for and shall pay all forum fees incurred in this matter in the amount of \$3,600.

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Pursuant to §10333 of the Code, Respondents TDI and T&D are each liable for and shall each pay the member surcharge in the amount of \$500.

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

Concurring Arbitrators' Signature

by Cynthia J. Thomson, Esq.
Cynthia J. Thomson, Esq.
Chairperson
Public Arbitrator

September 25, 1997
Dated:

by Edward J. Gay, III, Esq.
Edward J. Gay, III, Esq.
Panelist
Public Arbitrator

September 25, 1997
Dated:

by Ernest Lino Jordan
Ernest Lino Jordan
Panelist
Industry Arbitrator

September 26, 1997
Dated:

For NASD use only:

Date award served on the parties: September 26, 1997