

## NASD REGULATION AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Neal R. Zwicker

96-01560

Name of Respondents

Southwest Securities, Inc.  
Greenway Capital Corp.  
Jeffrey Peter Ihm  
T L Group, Inc.  
Johnston Kent Securities, Inc.  
J.B. Oxford Company  
Long Island Investment Group

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### REPRESENTATION

For Claimant Neal R. Zwicker ("claimant") appeared Andrew Rainer, Esq. of the law offices Shapiro, Haber & Urmy, LLP located in Boston, Massachusetts.

For Respondent Southwest Securities Inc. ("Southwest") appeared Will S. Montgomery, Esq. of the law offices Jenkins & Gilchrist located in Dallas, Texas.

For Respondent Greenway Capital Corp. ("Greenway") appeared Ruthann G. Niosi, Esq. with law offices located in New York, New York.

Respondent Jeffrey Peter Ihm ("Ihm") did not enter an appearance in this matter.

For Respondent T L Group, Inc. ("TL Group") appeared Fred LeFevre, President of TL Group.

Respondent Johnston Kent Securities, Inc. ("Johnston Kent") did not enter an appearance in this matter.

For Respondent J.B. Oxford Company ("JBOC") appeared Scott G. Monson, Esq., Associate General Counsel of JBOC.

Respondent Long Island Investment Group ("LIIG") did not enter an appearance in this matter.

### **CASE INFORMATION**

Statement of Claim was filed on: April 23, 1996.

Claimant's Submission Agreement was signed on: April 9, 1996.

Statement of Answer was filed by respondent Southwest on: June 27, 1996.

Respondent Southwest did not file a properly executed Submission Agreement.

Statement of Answer was filed by respondent Greenway on: August 30, 1996.

Respondent Greenway's Submission Agreement was signed on: September 20, 1996.

Respondent Ihm did not file a Statement of Answer or a properly executed Submission Agreement.

Statement of Answer was filed by respondent TL Group on: August 1, 1996.

Respondent TL Group's Submission Agreement was signed on: August 19, 1996.

Respondent Johnston Kent did not file a Statement of Answer or a properly executed Submission Agreement.

Statement of Answer was filed by respondent JBOC on: July 15, 1996.

Respondent JBOC's Submission Agreement was signed on: July 17, 1996.

Respondent LIIG did not file a Statement of Answer or a properly executed Submission Agreement.

### **HEARING INFORMATION**

Hearing Date/Session:

April 23, 1997

1 session

The hearing was conducted at the offices of NASD Regulation located in Boston, Massachusetts.

### **CASE SUMMARY**

Claimant maintained that, on or about November 22, 1995, his account was transferred from Greenway to TL Group and that Ihm was his broker at both of these firms. Claimant alleged that, from May 22, 1995 through November 30, 1995, Ihm made eleven unauthorized trades in his account. In addition, claimant contended that, although Ihm assured him that the unauthorized purchases would be reversed and he would receive cancel orders, the transactions were not reversed. Claimant further contended that he could not verify whether or not these transactions were being reversed since his statements were sent directly to Ihm. Claimant alleged that the firms for which Ihm worked did not properly inform him of the transactions in his account and did nothing to correct the illegal actions of its' brokers.

Southwest maintained that it provided clearing services to TL Group and that as a clearing firm it had no direct contact with any customer or any direct involvement with any customer account.

Southwest further maintained that, based upon the terms of the contract with TL Group, it was not responsible for reviewing the suitability of claimants' investments. Moreover, Southwest contended that the law recognizes that clearing firms are not responsible for the acts of its correspondents.

Greenway maintained that claimant ratified every transaction in his account. In addition, Greenway contended that the law provides that an investor is not permitted to play the market at the expense of the broker or broker dealer.

TL Group maintained that, on November 22, 1995, claimant transferred his account from Greenway to TL Group. TL Group contended that, because claimant failed to pay for a debit balance in his account, in accordance with Reg-T, claimant's current positions were sold to cover the debit balance. TL Group also maintained that, prior to the Reg-T liquidation, claimant's account appeared legitimate and in solid condition. In addition, TL Group alleged that it was not made aware of any alleged mishandling of claimant's account until February 28, 1996.

JBOC denied each and every allegation in the Statement of Claim. JBOC maintained that all transactions were carried out in accordance with the claimant's instructions and in conformity with all applicable laws, rules, and regulations. In addition, JBOC contended that it was not liable to claimant in any way because its role was limited to that of a clearing house for Greenway. JBOC also alleged that, at all times, it fulfilled its contractual obligations to Greenway in the servicing of claimant's account.

### **RELIEF REQUESTED**

Claimant requested actual damages in the amount of \$50,410.00, plus costs.

Southwest requested that all claims against it be dismissed in their entirety and that it be awarded all of its costs and attorneys' fees.

Greenway requested that all claims against it be dismissed in their entirety.

TL Group requested that all claims against it be denied in their entirety.

JBOC requested that all claims against it be dismissed and that it be awarded its costs, expenses and reasonable attorneys' 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.

LIIG is not a member of the NASD and did not voluntarily submit to NASD jurisdiction.

The panel found that service of the Statement of Claim was not properly effected upon respondent Johnston Kent. Therefore, all claims against Johnston Kent were dismissed without prejudice.

The panel approved a motion by the claimant that the hearing be kept open pending a settlement with and against JBOC and Southwest. By letter dated May 27, 1997, claimant notified NASD Regulation that claimant had reached settlement agreements with JBOC and Southwest.

At the hearing on April 23, 1997, the panel granted claimant's request that the panel approve a Consent to Entry of Order entered into by claimant and Greenway. Accordingly a copy of the signed Consent to Entry of Order is hereby annexed and made part of this Award. In addition, the panel incorporated the terms of the Consent to Entry of Order in the "Award" section below.

The panel made the following determinations concerning Ihm, who did not file a Statement of Answer and a Submission Agreement and who did not appear at the hearing in this matter, and Greenway and TL Group, who filed Statements of Answer and Submission Agreements but, did not appear at the hearing:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Greenway and TL Group were members of the NASD at the time this dispute arose and Ihm was a person associated with a member firm of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Greenway, TL Group and Ihm pursuant to Rule 10301 of the Code.
3. The panel found that Ihm was required to file a Statement of Answer and a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Ihm pursuant to Rule 10314(a) of the Code.
4. In accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Ihm, Greenway and TL Group with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Ihm, Greenway and TL Group whose absences were unexcused.

TL Group's request to appear telephonically was considered and decided.

#### **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 deter-

mination as follows:

1. Respondents Ihm and Greenway be and hereby are jointly and severally liable for and shall pay claimant the sum of **TWO THOUSAND THREE HUNDRED TWENTY FOUR DOLLARS (\$2,324.00)**.
2. Respondent Greenway be and hereby is liable for and shall pay claimant the sum of **TWO THOUSAND SIX HUNDRED SEVENTY SIX THOUSAND DOLLARS (\$2,676.00)**.
3. Respondents TL Group and Ihm be and hereby are jointly and severally liable for and shall pay claimant the sum of **SIXTY THREE THOUSAND ONE HUNDRED SEVENTY TWO DOLLARS (\$63,172.00)** plus interest at the rate of 5% per annum from March 20, 1996 until date of payment.
4. Respondents Ihm and TL Group be and hereby are jointly and severally liable for and shall pay claimant \$500.00 to reimburse claimant for a portion of the filing fees previously deposited with NASD Regulation.
5. ~~---~~ All other requests are hereby denied.

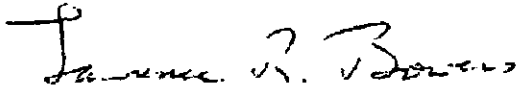
#### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation shall retain the \$150.00 non-refundable filing fee previously paid by claimant and the \$300.00 member surcharge previously paid by Southwest and have assessed the following forum fees:

1 hearing session x \$500.00	=	\$500.00
member surcharge (Greenway)	=	\$300.00
member surcharge (JBOC)	=	\$300.00
member surcharge (TL Group)	=	\$300.00

1. Respondents Ihm and TL Group be and hereby are jointly and severally liable for the sum of \$500.00, representing the total amount of fees assessed for the hearing conducted in this matter. Respondents Ihm and TL Group shall pay this sum to claimant as specified in the "Award" section above.
2. Respondent Greenway be and hereby is liable for and shall pay NASD Regulation the sum of \$300.00, representing the amount of the member surcharge assessed.
3. Respondent JBOC be and hereby is liable for and shall pay NASD Regulation the sum of \$300.00, representing the amount of the member surcharge assessed.
4. Respondent TL Group be and hereby is liable for and shall pay NASD Regulation the sum of \$300.00, representing the amount of the member surcharge assessed.

**ARBITRATORS' SIGNATURES**



Lawrence R. Bowers, Esq.  
Chairperson-Public Arbitrator

Howard M. Schott, Esq.  
Public Arbitrator


Francis C. Cleary, Esq.  
Industry Arbitrator

Date of Decision: September 5, 1997

**ARBITRATORS' SIGNATURES**

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Lawrence R. Bowers, Esq.  
Chairperson-Public Arbitrator

  
Howard M. Schott, Esq.  
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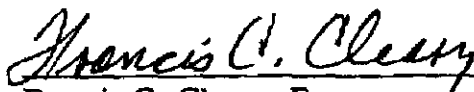
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