

NASD REGULATION, INC. AWARD

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In the Matter of the Arbitration Between

Names of Claimants

Carmen & Richard Spensieri

vs.

Case No.

96-01684

Names of Respondents

Southwest Securities, Inc.

Chamberlain & Grant Inc.

Clayton Chamberlain

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REPRESENTATION

For Claimants Carmen and Richard Spensieri ("Claimants") appeared Charles J. Engel, Esq., a private practitioner with offices located in Syracuse, New York.

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

For Respondent Chamberlain & Grant, Inc. ("CGI") did not attend the hearing.

Respondent Clayton Chamberlain ("Chamberlain") did not attend the hearing.

CASE INFORMATION

Claimants' Statement of Claim was filed on April 16, 1996. Claimants filed an Amended Statement of Claim on July 10, 1996. Claimants' Submission Agreement was signed on April 16, 1996.

Respondent Southwest filed a Statement of Answer and Motion to Dismiss on June 11, 1996. Respondent Southwest failed to submit an executed Submission Agreement.

Respondent CGI did not file a Statement of Answer or an executed Submission Agreement.

Respondent Chamberlain did not file a Statement of Answer or an executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:	August 22, 1997	One Session
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Hearing Dates/Sessions:	October 16, 1997	Three Sessions
	October 17 1997	Two Sessions

The hearings were conducted at the Marriott Hotel, located on Wolf Road in Albany, New York.

**CASE SUMMARY**

Claimants alleged that they opened an account with Respondent Southwest through Respondents Chamberlain and CGI, who were agents of Respondent Southwest. Claimants also alleged that Respondent Chamberlain made excessive and unauthorized trades in their account. Claimants further alleged that Respondent Southwest permitted Respondent Chamberlain to make extremely risky options trades in their account without authorization and failed to supervise Respondents CGI and Chamberlain. Claimants asserted that Respondents Southwest, CGI, and Chamberlain violated various securities laws and the NASD Rules of Fair Practice. Claimants further asserted that Respondent Southwest allowed options trading in Claimants account, failed to exercise due diligence over the account, and failed to obtain Claimant's financial situation and investment objectives.

Claimants contended that Respondent Southwest either directly or indirectly controlled the activities of Respondents CGI and Chamberlain by providing loans to their customers, permitting customers to purchase securities in which up to one-half of their cost was provided with loaned Southwest funds. Claimants sought treble damages pursuant to Federal Racketeer Influenced and Corrupt Organizations Act ("RICO").

Respondent Southwest denied liability to Claimants. Respondent Southwest maintained that it provided clearing services for Claimants' broker and that under the clearing agreement between Respondent Southwest and Respondent CGI, Southwest provided clearing services and Respondent CGI was responsible for verifying and monitoring Claimants' account. Respondent Southwest also maintained that it, therefore, could not be held liable. Respondent Southwest asserted that Claimants were informed of the relationship between Respondents Southwest and CGI at the opening of their account. Respondent Southwest further asserted that it complied with its duties and obligations under the clearing agreement. Respondent Southwest alleged that it had no knowledge of any dealings between Claimants and Respondent CGI.

Respondent Southwest raised a Motion to Dismiss on the grounds that: (1) Respondent Southwest owed no fiduciary duty to Claimants; (2) Respondent CGI was not an agent of Respondent Southwest; (3) Respondent Southwest was not a controlling person within the meaning of the securities laws; (4) Respondent Southwest was not liable for aiding and abetting any actions of Respondent CGI; and (5) Claimants' RICO allegations were meritless.

**RELIEF REQUESTED**

Claimants requested damages as follows:

Actual Damages	\$100,000.00
Punitive Damages	\$500,000.00
RICO Treble Damages	\$300,000.00
 Total Damages	 \$900,000.00

Claimants also requested interest on total damages, reimbursement of attorneys' fees and disbursements, forum fees, all other expenses, and all other such relief that the panel deemed appropriate.

Respondent Southwest requested that they be dismissed from this action before the hearing. Respondent Southwest also requested that, in the event the aforesaid motion was not granted, the Statement of Claim

be dismissed in its entirety, and further requested all costs and 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 original remains on file with the NASD.

The panel made the following determinations concerning Respondents CGI and Chamberlain, who did not file a Statement of Answer and a Submission Agreement and did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter over this entire controversy.
2. The panel found that Respondent Chamberlain was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Respondent Chamberlain pursuant to Rule 10301 of the Code.
3. The panel found that Respondents CGI and Chamberlain were required to file Statements of Answer and Submission Agreements 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 Respondents CGI and Chamberlain pursuant to Rule 10314(a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Respondents CGI and Chamberlain 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 Respondents CGI and Chamberlain whose absence was unexcused.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions filed by Claimants and Respondent Southwest, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents CGI and Chamberlain be and hereby are jointly and severally liable and shall pay to Claimants the sum of \$57,000.00.
2. All claims against Respondent Southwest are hereby denied.
3. Claimants' request for punitive damages is hereby denied.
4. All parties shall bear their respective costs, including attorneys' fees, except that Respondents Southwest, CGI and Chamberlain are hereby liable and shall pay to Claimants the sum of \$1,000.00 to reimburse Claimants for the hearing session deposit paid to NASD Regulation, Inc.

5. All other requests for relief are hereby denied.

**FORUM FEES**

Pursuant to Rule 10332(c) of the NASD Regulation, Inc. *Code of Arbitration Procedure*, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee previously submitted by Claimants, and the \$1,000.00 postponement fee previously submitted by Respondent Southwest. The arbitrators have also assessed the following forum fees:

1 Pre-Hearing Conference x \$300.00	=	\$ 300.00
5 Hearing Sessions x \$1,000.00	=	\$5,000.00
Total Forum Fees	=	\$5,300.00

The arbitrators have determined that the forum fees are to be split equally between Respondent Southwest and Respondents CGI and Chamberlain, jointly and severally.

1. Respondent Southwest be and hereby is liable and shall pay the sum of \$2,650.00, representing one-half of the total forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc., therefore, Respondent Southwest shall pay the sum of \$500.00 to Claimants, representing one-half of the hearing session deposit, as provided in the "Award" section above, and the balance of \$2,150.00 to NASD Regulation, Inc.
2. Respondents CGI and Chamberlain be and hereby are jointly and severally liable and shall pay the sum of \$2,650.00, representing one-half of the total forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc., therefore, Respondents CGI and Chamberlain shall jointly and severally pay to Claimants the sum of \$500.00, representing one-half of the hearing session deposit, as provided in the "Award" section above, and the balance of \$2,150.00 to NASD Regulation, Inc.
3. Claimants be and hereby are jointly and severally liable and shall pay the sum of \$1,000.00 for the postponement fee. Claimants have submitted the sum of \$650.00, and, therefore, Claimants owe the balance of \$350.00
4. Respondent Southwest be and hereby is liable for the sum of \$500.00 for the Member Surcharge. Respondent Southwest has submitted the sum of \$500.00, and, therefore, does not owe the Member Surcharge.
5. Respondent CGI be and hereby is liable for the sum of \$500.00 for the Member Surcharge. Respondent CGI has not submitted the sum of \$500.00, and, therefore, owes the Member Surcharge.

Fees are payable to NASD Regulation, Inc.

**CONCURRING ARBITRATORS' SIGNATURES**

I, Robert D. Herschman, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



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Robert D. Herschman, Esq.  
Public Arbitrator - Chairperson

I, Charles Mullen, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.

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Charles Mullen, Esq.  
Public Arbitrator

I, Josef E. Windbiel, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules that I am the individual described herein and who executed this instrument which is my award.

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Josef E. Windbiel  
Industry Arbitrator

Date of Decision: January 30, 1998

CONCURRING ARBITRATORS' SIGNATURES

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Robert D. Herschman, Esq.  
Public Arbitrator - Chairperson

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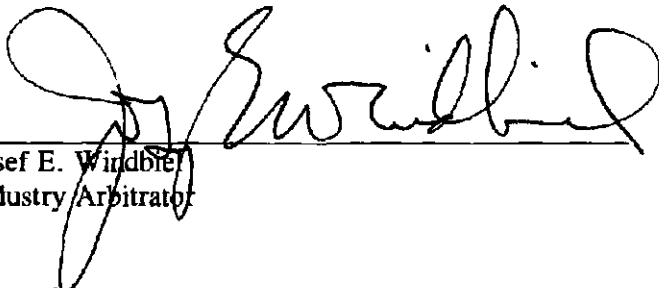
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