

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Charles Maley
Bradley Cimo

96-02080

Name of Respondents

Julius Baer Securities, Inc.
Bank Julius Baer
Julius Baer Holdings

REPRESENTATION

For Claimants Charles J. Maley and Bradley D. Cimo ("Claimants") appeared Jeffrey L. Liddle, Esq. and Allan S. Bloom, Esq. of the law firm of Liddle & Robinson, L.L.P. located in New York City, New York.

For Respondents Julius Baer Securities, Inc., Bank Julius Baer and Julius Baer Holdings ("Respondents") appeared Danforth Newcomb, Esq. and Bruce B. Kelson, Esq. of the law firm of Shearman & Sterling located in New York City, New York.

CASE INFORMATION

HEARING INFORMATION

Pre-hearing Conference:	June 17, 1997 -	One Session
Hearing Dates/Sessions:	June 23, 1997 -	Two Sessions
	June 24, 1997 -	Two Sessions
	June 25, 1997 -	Two Sessions

The hearing was held at the office of the NASD Regulation, Inc. located in New York City, New York.

CASE SUMMARY

Claimants alleged that, together, they have over 30 years of experience in institutional sales and trading. Claimants also alleged that, in 1992, when Maley was working at Oppenheimer and Cimo at Gruntal, Claimants entered into extensive discussions with Paul Nathan ("Nathan"), then a Senior Vice President and Head of Trading for Julius Baer, regarding Claimants joining Julius Baer, where Claimants could establish and co-manage a broker-dealer branch office for Julius Baer in Florida, and sell and trade a broad range of fixed income and related securities.

Claimants alleged that, on April 13, 1993, they were invited to New York to meet with Bernard Spilko ("Spilko"), the head of Julius Baer Securities; Raymond Baer, the Head of Julius Baer's New York office; and other senior executives of Julius Baer, to finalize an agreement for Claimants to join Julius Baer. Claimants also alleged that, during these meetings, Claimants presented each of the Julius Baer executives with a memorandum "pitch," entitled "Introduction and Instrument Profile," which outlined the business Claimants would bring to Julius Baer. In this "pitch," on the basis of which Claimants alleged that they were hired, Claimants projected that in their first year of operation in Florida, they expected to earn between \$500,000 to \$600,000 in gross commissions, between \$1 million to \$1.5 million in the second year, and over \$3 million by the fifth year in operation.

Claimants maintained that, in December 1993, they relocated to New York from Florida to begin working for Julius Baer. Claimants also maintained that Employment Agreements were presented to them which were executed on January 17, 1994, nearly 18 months after Claimants' initial meeting with Nathan. Claimants alleged that they commenced work for Julius Baer on the following day.

Claimants maintained that, immediately upon starting work for Julius Baer, Claimants discovered that Julius Baer had been dishonest and deceitful to Claimants during the long negotiations, and had made a series of misrepresentations and unkept promises regarding Claimants' employment, upon which Claimants relied to their detriment.

First, Claimants alleged that Respondents had withheld from Claimants the fact that Nathan, who was the sole representative of Julius Baer during the 18 months of negotiations -- and who had promised to shepherd Claimants through the transition period to Julius Baer once Claimants arrived in New York -- had relocated to San Francisco in 1993.

Second, Claimants alleged that, at all times during the negotiations with Claimants, Nathan misrepresented that Julius Baer would establish a Florida branch office which Claimants would co-manage and staff, after Claimants completed a six month to one year orientation in Julius Baer's New York office. Claimants also alleged that they were informed by Nathan that the orientation period was necessary so that Claimants could become acquainted with senior management and the other traders at Julius Baer, and otherwise facilitate the transition to Florida. Claimants maintained that, in May 1994, however, Spilko informed Claimants that they would not manage the Florida office.

Third, Claimants further asserted that Nathan repeatedly misrepresented to Claimants that Julius Baer was a "market maker" in foreign bonds, and traded "\$4 billion [on the foreign currency markets] a day." Claimants alleged that Nathan further told Claimants that based upon Julius Baer's market position, Claimants would have significant access to the European bond markets. Claimants maintained that, shortly after joining Julius Baer, however, they learned that Julius Baer was merely a broker in the European and Asian bond and currency markets, and was far from the "market maker" that Nathan and Baer represented it to be. Claimants also alleged that they were given no access to these investment products for sale to their clients.

Fourth, Claimants alleged that Nathan misrepresented to Claimants that they would be able to utilize for their clients the services of Julius Baer Investment Management ("JBIM"), the money management arm of Julius Baer and further misrepresented to Claimants that they would be entitled to a finder's fee, or "trailer," for all transactions they referred to JBIM. Claimants asserted, that shortly after the execution of the Employment Agreements, Claimants were informed that Claimants had absolutely no access to JBIM.

Claimants also alleged that Julius Baer failed to pay Claimants for trades involving listed commodity

futures and related options (which Claimants alleged Respondents knew were an integral part of Claimants' everyday business) in accordance with the commission schedules set forth in the Employment Agreements. Claimants asserted that Julius Baer deducted an inflated clearing charge on such trades before incorrectly calculating Claimants' commission.

Claimants asserted that, in November 1994, notwithstanding the fact that Claimants' production was ahead of schedule according to Claimants' revenue projections, Spilko informed Claimants that the Florida branch office would not be opened, and that their employment with Julius Baer was effectively over. Claimants alleged that Spilko allowed Claimants to continue to conduct business so that they could cover their living expenses in New York (until their eventual return to Florida), and agreed to sponsor Claimants for their Series 24 principal examinations. Claimants asserted that they passed their principal's exams, and in April 1995, they received official notice of termination from Julius Baer. Claimants alleged that shortly thereafter, they resigned.

Claimants asserted that, as a result of Respondents' fraud and breach of promises, Claimants lost significant business income, earnings potential, and business opportunities in the latter half of 1993, 1994, 1995, and 1996.

As to the first claim, Respondents maintained that they never made any representations with regard to managing a Florida office, access to the services of an investment advisor and the promise of a finders fee. Respondents further maintained that such a claim based on an "implied-in-fact" contract is unavailable as a matter of law because of the existence of written employment contracts covering the same subject matter and because those written contracts expressly contradict such claim.

As to the second claim, Respondents maintained that the Parties' course of conduct modified the commission compensation provisions of the written employment contracts. Respondents further maintained that Claimants' trades of listed commodity futures and related options were outside of the scope of the written employment agreements and were never intended to be subject to the commission compensation provisions thereof, although Respondents later agreed to offer commissions to Claimants in an effort to support Claimants' ancillary business.

As to the third claim, Respondents maintained variously that they never made any such statements, that such statements were in fact true and/or immaterial to Claimants, that no intent to deceive or scienter had been alleged, much less proven, by Claimants, and that the statements could not have served as the basis for justifiable reliance thereon by Claimants. Respondents maintained that such alleged statements by Respondents were therefore not a sufficient basis for a claim for fraudulent inducement.

Respondents further maintained that Claimants made a proposal to Respondents to establish at Respondents' office a business in the trading of certain specialized mortgage-backed securities on a non-risk basis, and that Respondents had hired Claimants on the basis of that proposal. Respondents further maintained that Claimants had been terminated according to the contract, and/or chose to resign, because the market for those specialized securities had evaporated shortly after their employment and that the commission income generated by Claimants' business was insufficient to warrant the continuance of the venture.

RELIEF REQUESTED

Claimants requested:

1. Lost earnings for 1993 in the amount of \$100,000 per Claimant;
2. Lost earnings for 1994 in the amount of \$137,500 per Claimant;
3. Lost earnings for 1995 in the amount of \$325,000 per Claimant;
4. Lost earnings for 1996 in the amount of \$800,000 per Claimant;
5. Interest on all claims;
6. Punitive damages in an amount to be determined by the Panel for Respondents' gross, wanton and willful conduct;
7. Costs incurred in pursuing this arbitration; and
8. Any other and further relief as the Panel deems just and proper.

Respondents requested that each claim be dismissed, together with an award in their favor of costs and disbursements including reasonable counsel fees.

OTHER ISSUES CONSIDERED AND 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Bank Julius Baer, Julius Baer Securities and Julius Baer Holdings be and hereby are jointly and severally liable and shall pay to claimants Charles J. Maley and Bradley D. Cimo the sum of \$575,000.00 in compensatory damages;
2. Respondents Bank Julius Baer, Julius Baer Securities and Julius Baer Holdings be and hereby are jointly and severally liable and shall pay to claimants Charles J. Maley and Bradley D. Cimo the sum of \$105,969.00 in pre judgment interest.
3. All other claims for relief are denied.

FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the panel has determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee and have assessed the following forum fees:

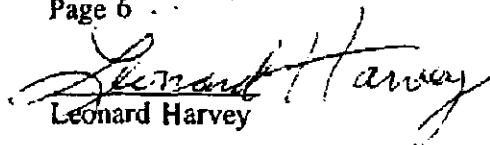
One prehearing conference x \$300.00 = \$300 plus six hearing sessions x \$750.00 = \$4800.00 - claimants' hearing session deposit (-\$750.00) = \$4050.00 outstanding.

Claimants be and hereby are jointly and severally liable and shall pay the sum of \$2400.00 representing one half of the forum fees assessed. Claimants have previously deposited the sum of \$750.00 with NASD Regulation, Inc. and therefore owe \$1650.00.

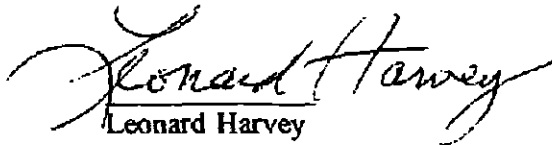
Respondents be and hereby are jointly and severally liable and shall pay the sum of \$2400.00 representing one half of the forum fees assessed. Respondents owe NASD Regulation, Inc. the sum of \$2400.00.

Respondents be and hereby are jointly and severally liable for the sum of \$350.00 representing the member surcharge. Respondents have previously deposited the sum of \$350.00 with NASD Regulation, Inc. and therefore owe nothing towards the member surcharge.

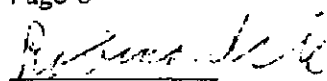
Fees are payable to NASD Regulation, Inc.


Leonard Harvey

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

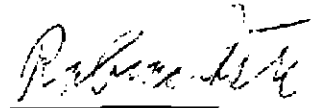

Leonard Harvey

Date of Decision: July 14, 1997



Robina Asti

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



Robina Asti

Date of Decision: July 14, 1997


Jeffrey F. Friedman

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


Jeffrey F. Friedman

Date of Decision: July 14, 1997