

**NASD REGULATION AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION**

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In the Matter of the Arbitration Between

**Name of Claimant**

Eugene R. Emery

96-02103

**Name of Respondent**

Paul V. Horman

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**REPRESENTATION**

For Claimant Eugene R. Emery ("claimant") appeared Alfred J.T. Rubega, Esq., with law offices in Concord, New Hampshire.

Respondent Paul V. Horman ("respondent") appeared pro se.

**CASE INFORMATION**

Statement of Claim was filed on: May 8, 1996.

Claimant's Submission Agreement was signed on: May 8, 1996.

Statement of Answer was filed by Respondent on: June 22, 1996.

Respondent's Submission Agreement was signed on: June 25, 1996.

**HEARING INFORMATION**

Hearing Date/Sessions: February 10, 1997 - 2 sessions

The hearings were conducted at the offices of the National Association of Securities Dealers, Inc. located in Boston, Massachusetts.

**CASE SUMMARY**

Claimant alleged that in January, 1995 he went to the Manchester, New Hampshire office of Smith Barney and was introduced to respondent. Claimant contended that, although he had

never been in the stock market, knew nothing about options and did not know the difference between a put and a call, respondent, on the first day they met, sold him his first option. In addition, claimant alleged that between January and July, 1995 respondent, through an extremely excessive course of options trading, caused him approximately \$41,000.00 in losses. Claimant further contended that, based upon respondent's advice, he took cash advances in the amount of approximately \$25,000.00 on his credit cards in order to trade in options.

Claimant alleged that instead of trading for the purpose of generating a reasonable return on claimant's investment, respondent engaged in excessive trading for the purpose of generating commissions. In addition, claimant contended that the products that respondent traded in his account were too risky for him considering his situation in life, his lack of understanding, and his status as a novice investor. Claimant also maintained that respondent engaged in unauthorized trading in his account and failed to diversify his investments. Further, claimant alleged that respondent made material misrepresentations and/or omissions regarding the risks to which claimant was being exposed and the returns he could reasonably expect to earn and, thereby breached his fiduciary duties. In addition, claimant contended that respondent breached his fiduciary duties by being aware of and actively encouraging claimant to take cash advances on his credit cards in order to trade options.

Respondent denied the allegations contained within the Statement of Claim. In addition, respondent alleged that based upon the nature of options trading, the number of transactions traded in claimant's account could hardly be considered excessive. Respondent also contended that claimant was responsible for his own actions and for sixty-five out of seventy-seven transactions. Respondent further maintained that claimant was well acquainted with the risks of options trading, had received the booklet "Characteristics and Risks of Standardized Options," and signed an options application and agreement.

In addition, respondent contended that claimant's complaint resulted in an entry on his U-5 form which would have a negative impact upon his future earnings within the financial services industry. Therefore, respondent asserted a counterclaim for defamation of character, irreparable harm, and libel.

Claimant, in reply to the counterclaim, alleged that the factual assertions contained in respondent's Answer and Counterclaim were inaccurate. In addition, claimant contended that allowing respondent's counterclaim would be contrary to the law and the rules of the NASD and the exchanges.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$30,000.00, plus interest, punitive damages and attorneys' fees. In addition, claimant requested that respondent's counterclaim be denied.

Respondent, in his counterclaim, requested an award of punitive damages in an amount to be determined by the panel.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the hearing, the arbitrator dismissed respondent's counterclaim.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable to claimant in the amount of **TEN THOUSAND DOLLARS (\$10,000.00)** plus interest in the amount of one thousand dollars (\$1,000.00).
2. Claimant's request for punitive damages is hereby denied.
3. Respondent's counterclaim is dismissed in its entirety.
4. Each party shall bear their respective costs, including attorneys' fees.
5. All other claims are hereby denied.

### **FORUM FEES**

Pursuant to Rule 10332 (formerly section 43) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$100.00 non-refundable filing fee previously paid by claimant and have assessed the following forum fees:

2 Hearing Sessions x \$300.00 = \$600.00

1. Claimant be and hereby is liable for the sum of \$300.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$300.00 with the NASD and, therefore, owes nothing.
2. Respondent be and hereby is liable for the sum of \$300.00, representing one-half of the total amount of forum fees assessed. Additionally respondent shall pay the \$500.00 non-refundable filing fee associated with filing a counterclaim.

Fees are payable to the National Association of Securities Dealers, Inc.

**Arbitrator's Signature**

  
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**Cornelius J. McAuliffe, Esq.**  
**Chairperson, ~~Public~~ Arbitrator**

**Date of Decision:** March 6, 1997