

N.A.S.D. REGULATION, INC. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Scott and Jemiliya Pudalov

96-02219

Name of Respondents

Auerbach, Pollack & Richardson Inc.
Robert Arndt

REPRESENTATION

For claimants Scott and Jemiliya Pudalov ("claimants") appeared their representative Pierre Merle, Esq. a sole practitioner, located in New York, New York.

For respondents Auerbach, Pollack & Richardson, Inc. ("APR") and Robert Arndt ("Arndt") appeared their representative Hilary Miller, Esq, a sole practitioner, located in Greenwich, Connecticut.

CASE INFORMATION

Statement of Claim filed: May 21, 1996.

Claimants' Submission Agreement signed on: May 18, 1996.

A Joint Statement of Answer filed by respondents on: July 17, 1996.

Respondent APR's Submission Agreement signed on: July 15, 1996.

Respondent Arndt did not file a properly notarized Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:	February 3, 1997	2 sessions
	February 4, 1997	1 sessions
	Total	3 sessions

The hearings were conducted at Club Quarters located at 52 Williams Street New York, New York.

CASE SUMMARY

Claimants alleged that respondent APR mishandled their securities account by, among other things, failing to follow Article III, Sec. 33(16) of the RFP governing the opening of customer accounts, failing to supervise their account, failing to enforce its internal control procedures, recommending unsuitable securities, engaging in fraudulent activity by permitting Arndt to make unauthorized trades and by allowing Arndt to execute excessive transactions. Claimants further alleged that prior to March 1994, they opened an account at APR pursuant to the solicitations of Arndt. Claimants also alleged that Arndt sent them an "Options Information Form and Agreement" and that they signed the form and returned it to him with the remainder of the information not filled in as Arndt had requested. Claimants contended that the missing information was inaccurately filled in by APR and that it was not verified with them. Claimants further contended that all trading was to be authorized by them and that Arndt was not given the authority to make discretionary trades. Claimants also contended that around March 30, 1994 they purchased 20 put options on the S&P 100 Index and that Arndt caused the purchase to be sold the same day for an apparent profit of \$949.72. Claimants asserted that Arndt then made no less than 12 unauthorized trades in addition to purchasing \$20,000.00 worth of shares in U.S. Delivery Systems, Inc. Claimants further asserted that these shares were immediately sold and a series of speculative and risky trades were made by Arndt resulting in losses and that margin purchases were used despite the lack of authorization to use a margin account.

Claimants asserted that upon complaining about the margin account trades, Arndt said it was a mistake and would be corrected. Claimants alleged that during the early summer of 1994, they first noticed the unauthorized trading and that in July of that year they contacted Arndt who admitted to the unauthorized trading. Claimants further alleged that Arndt assured them during the conversation that the trading losses would be regained by the end of the year with additional profit. Claimants also alleged that they requested that Arndt stop the trading but that their requests were ignored. Claimants contended that by February of 1995, their account had a value of only \$153.00.

Claimants alleged that on or about June of 1994, Arndt recommended that they open an account at Marc Commodities Corp with Williams George stating that APR's good name was behind it. Claimants further alleged that this account was also the subject of unauthorized trades and losses.

Claimants contended that as a result of the above, they have suffered damages for which the respondents should be held liable.

Respondents maintained that APR is a full-service investment banking, research, brokerage and trading firm which enjoys an excellent reputation in the industry and is known for its high standards of ethical practice. Respondents further maintained that Scott Pudalov is a self-described extremely experienced trader of speculative investments, with a net worth of more than \$1,000,000.00 and a similar liquid net worth. Respondents also maintained that claimants' claim

is an extremely contorted view of the facts and that the damages are self-inflicted. Respondents contended that despite losing money, Scott Pudalov continued sending in money and made no objections to the trades. Respondents further contended that no correspondence was sent in by claimants until over one year after the first purported unauthorized trade. Respondents asserted that Arndt relied on Scott Pudalov's representations about investment experience and net worth and that his reliance on this information was reasonable and in keeping with standards and practices in the industry. Respondents further asserted that claimants were sent a standard Options Information Form and Agreement and that they returned it promptly. Respondents also asserted that at Scott Pudalov's request several trades were executed and that the money to support these transactions was routinely sent to APR.

Respondents maintained that the first complaint was not received until after claimants lost money through Marc Commodities Corp. Respondents further maintained that they are not affiliated with March Commodities, Corp. and are not responsible as a matter of law.

Respondents also maintained that claimants ratified and approved all trades in their account and that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimants requested \$33,306.28 in restitution damages plus interest.

Respondents requested that the claims be dismissed in their entirety and that they receive costs.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings concerning respondent Robert Arndt who did not file a Submission Agreement:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that respondent Robert Arndt was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Respondent pursuant to Rule 10301 of the NASD Code of Arbitration Procedure.
3. In view of (2) above, the panel found the Respondent was required to file with the NASD a properly executed Submission Agreement pursuant to Rule 10314(b) of the NASD Code of Arbitration Procedure. In this regard, the panel found that the Statement of Claim was properly served upon respondent Robert Arndt, pursuant to Rule 10314(a) 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 originals remain on file with the NASD.

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 Auerbach, Pollack & Richardson, Inc. and Robert Arndt be and hereby are jointly and severally liable and shall pay to the claimants Scott and Jemiliya Pudalov \$9,913.50 in actual damages.
2. Respondents Auerbach, Pollack & Richardson, Inc. and Robert Arndt be and hereby are jointly and severally liable and shall pay to the claimants Scott and Jemiliya Pudalov \$977.77 in interest damages.
3. Respondents Auerbach, Pollack & Richardson, Inc. and Robert Arndt be and hereby are jointly and severally liable and shall pay to the claimants Scott and Jemiliya Pudalov simple interest at the legal rate from February 4, 1997 until the date of payment.
4. The parties shall bear their respective attorney's fees and costs.
5. All other relief requests are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$120.00 non-refundable filing fee previously deposited by claimants and have assessed the following forum fees:

3 sessions x \$400.00	= \$1,200.00
Minus claimants' \$400.00 deposit	= <u>\$ 400.00</u>
total outstanding	= \$ 800.00

Claimants be and hereby are jointly and severally liable for the sum of \$600.00 representing one-half of the total amount of forum fees assessed. Claimants previously deposited \$200.00 with NASD Regulation, Inc. Therefore, the claimants shall pay \$200.00 to NASD Regulation, Inc. in satisfaction of the outstanding forum fees.

Respondents be and hereby are jointly and severally liable for the sum of \$600.00 representing one-half of the total amount of forum fees assessed. Therefore, the respondents shall pay \$600.00 to NASD Regulation, Inc. in satisfaction of the outstanding forum fees.

Fees are payable to NASD, Regulation Inc.

ARBITRATORS' SIGNATURES

BLAIR ALLEN
I, ~~Allen Blair~~, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

BLAIR Allen Blair
Allen Blair, Esq.
Public Chairperson

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

Anne Cugliani
Public Panelist

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

Michael Clements
Industry Panelist

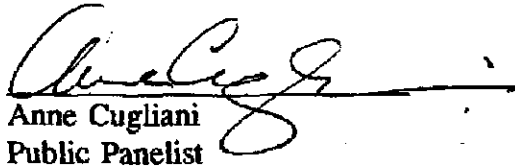
Date of Decision: March 12, 1997

ARBITRATORS' SIGNATURES

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

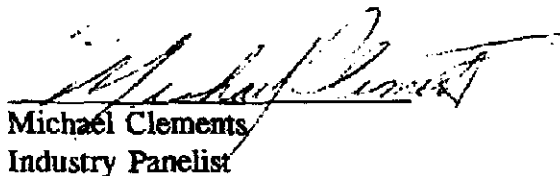
Allen Blair, Esq.
Public Chairperson

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



Anne Cugliani
Public Panelist

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



Michael Clements
Industry Panelist

Date of Decision: March 12, 1997