

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Vanni Enterprises, Ltd.

96-02478

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Joseph R. Chiarantona

REPRESENTATION

Claimant Vanni Enterprises, Ltd. ("Claimant") was represented by Albert P. Parker, Esq., Schnader, Harrison, Segal & Lewis, Philadelphia, PA.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Joseph R. Chiarantona ("Chiarantona") were represented by Marianne Johnston, Esq., Stradley Ronon Stevens & Young, Philadelphia, PA.

CASE INFORMATION

The Statement of Claim was filed June 10, 1996.
Claimant's Uniform Submission Agreement was signed June 6, 1996.

The Joint Statement of Answer of MLPFS and Chiarantona (collectively "Respondents") was filed August 9, 1996.

The Counterclaim of MLPFS was filed August 9, 1996.

Neither MLPFS nor Chiarantona filed executed agreements to arbitrate.

HEARING INFORMATION

Hearing Dates/Sessions: February 5, 1997/two sessions
February 6, 1997/two sessions

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimant alleged, among other things, Respondents were aware that Claimant was an unsophisticated investor and that Claimant relied upon the advice and counsel of Respondents concerning the purchase of securities. Claimant also alleged that Respondents induced Claimant to authorize inappropriate and risky investments. Claimant alleged that an account was opened with MLPFS in 1991 and Chiarantona was Claimant's account executive. Claimant alleged that Respondents breached their fiduciary duty to Claimant by failing to provide appropriate guidance on the market and trading techniques. As Claimant became more dependent on Respondents' persuasive assurances, Claimant alleged that authorization was made for increasingly sophisticated trading schemes in high-tech securities on margin. Claimant alleged that Claimant relied upon Respondents' representations about the risks and liabilities associated with margin account trading. Claimant alleged that on December 20, 1995, Claimant was induced to purchase 1,000 shares of Netscape; 1,000 shares of Spyglass; and 3,000 shares of Quarterdeck for a total in excess of \$300,000.00. Claimant alleged that as the value of Claimant's account was approximately \$152,000.00 at that time, Respondents induced Claimant to buy on margin. Claimant alleged that he was not aware of the status of his margin account and relied on Respondents to ensure that it was feasible and acceptable to buy these securities on margin. Claimant alleged that later that same day, Claimant received a margin call because the purchases effected earlier that day had caused a violation of the margin requirements. Claimant alleged that Chiarantona's sales assistant informed Claimant that the trades earlier that day should not have been executed by MLPFS because the purchases were a clear error of the applicable margin rules and regulations. As a result of the margin call, Claimant alleged that Claimant was forced to liquidate its entire stock portfolio and, in addition, Respondents insist that Claimant owes a balance of \$31,281.68 to meet the margin deficit. Claimant alleged that Chiarantona mismanaged its account and failed to comply with applicable margin rules as well as the rules of fair dealing. Claimant alleged that MLPFS failed to adequately supervise the activity of Chiarantona in the management of Claimant's account as well as Claimant's margin accounts. Claimant alleged that Respondents negligently failed to inform Claimant that insufficient funds existed in its margin account to make the purchases on December 20, 1995 and failed to cancel the purchases upon the realization that Claimant's margin account lacked sufficient funds to make those purchases without violating applicable margin rules. Claimant alleged that Respondents' actions and failures violated federal, state and local securities laws as well as the NASD Rules of Fair Practice.

Respondents denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that contrary to Claimant's attestation after the fact, at the time of opening the account, Claimant's representative, Mr. Peduto ("Peduto"), presented himself as an experienced and astute investor, very familiar with the nomenclature and risks of investing in stocks. Respondents maintained that documents presented by Claimant at the time of opening the account, Claimant had been created to engage in a variety of business activities, including investments in securities. Respondents maintained that subsequent to opening the account, Peduto telephoned MLPFS nearly every business day after reading the financial press, to request news service updates on stocks that he was following. In the ensuing relationship, Respondents maintained that Chiarantona became little more than an order taker as Peduto made it increasingly clear that he was not interested in any investment guidance from Respondents. Respondents maintained that Peduto never asked for advice and ignored any recommendation that Chiarantona offered. Respondents maintained that the mechanics, risks and costs of margin trading was carefully explained to Claimant and from 1991 through 1993, Claimant experienced no margin problems in the account. Respondents maintained that during 1994, Claimant's trading activities increased and Claimant received margin calls on several occasions for which funds were promptly deposited. Respondents maintained that in the summer of 1995, Claimant informed Respondents that it wanted to step up its level of trading and requested a discount in Claimant's trades,

which Respondents agreed to. Respondents maintained that then Peduto started buying technology stocks, often taking large positions in a single stock, and persisting in making the trades even when Respondents advised against it. Respondents maintained that they were concerned about Claimant's trading activity and on several occasions during 1995, received verification of satisfaction from Peduto in response to telephone calls and written concerns regarding the trading activities. Respondents maintained that Claimant disregarded Respondents' recommendations to remain diversified, Peduto insisted on selling a substantial portion of Claimant's stock holdings to enable Peduto to purchase large positions in Internet stocks. Respondents maintained that when Peduto directed Chiarantona to buy the shares on December 20, 1995, Chiarantona informed Peduto that the purchases were in excess of the buying power available to Claimant on margin. Respondents maintained that Peduto insisted that the funds to pay for the stock would be deposited or that other positions in the account would be sold to pay for the purchases. Respondents maintained that Peduto was informed on that same day, funds must be deposited in the account to cover the margin requirements, but no funds were deposited in Claimant's account. Eventually, Respondents maintained, MLPFS decided to sell the stocks in Claimant's account to reduce the margin deficit, leaving a balance owing of \$10,304.40, erroneously calculated previously as \$31,328.07. Respondents raised the affirmative defenses of estoppel; a bar by the applicable statute of limitations; ratification; failure to mitigate; and Claimant's contributory negligence. Respondents maintained that any loss suffered by Claimant is solely attributable to market conditions and Claimant's, through Peduto, own decisions and actions.

Counterclaimant MLPFS ("Counterclaimant") alleged that Claimant has a margin balance of \$10,304.40 plus interest from January 31, 1996 until the date of the award. Counterclaimant alleged that on July 10, 1992, Peduto, as president of Vanni Enterprises, executed an Investor CreditLine Service Client Agreement ("Agreement") under which Claimant agreed to maintain a sufficient level of collateral in Claimant's account. Counterclaimant alleged that Claimant agreed to liability for any deficiency remaining in such account in the event of its liquidation. Despite MLPFS's repeated demands to provide adequate collateral following Claimant's stock trading activity in December 1995, Claimant has failed to do so. Counterclaimant alleged that Claimant breached its agreement by failing to pay its outstanding debit balance.

Claimant denied owing any money as asserted in the Counterclaim. Claimant maintained that MLPFS independently caused Claimant to incur substantial damages, including the amount allegedly remaining due in Claimant's margin account. Claimant maintained that the alleged \$10,304.40 deficiency is directly and strictly attributable to the improper conduct of MLPFS.

RELIEF REQUESTED

Claimant requested damages in excess of \$183,000.00; punitive damages; interest on funds invested as well as the costs of this arbitration including reasonable attorney's fees.

Respondents requested that the claims for damages be denied in all respects and that the costs of this proceeding, including attorneys' fees, be assessed against Claimant.

Counterclaimant requested \$10,304.40 plus interest from January 31, 1996 to the date of the award.

Claimant requested that MLPFS's counterclaim be denied.

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.

That pursuant to the by-laws of the NASD, the panel determined that MLPFS and Chiarantona were required to submit to arbitration, notwithstanding their failure to file executed agreements to arbitrate. Therefore, MLPFS and Chiarantona are bound by the decisions and rulings of the panel.

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. That the Statement of Claim is denied.
2. That the request for punitive damages is denied.
3. That the Counterclaim is denied.
4. That each party shall bear its own costs and expenses including attorneys fees, with the exception of the Forum Fees as specified below.
5. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions x \$750.00 = \$3,000.00

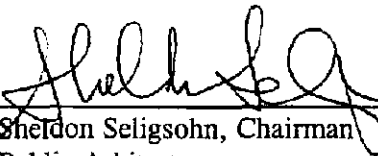
Forum Fees are assessed at \$1,500.00 to Claimant and \$1,500.00 to Respondents, jointly and severally. Claimant is to receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$750.00. Respondents have an assessment due of \$1,500.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

2/19/97


Sheldon Seligsohn, Chairman
Public Arbitrator

Jerry Schuchman
Public Arbitrator

Jerry Brown
Industry Arbitrator

Date Decision Served by NASD Regulation: February 25, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Sheldon Seligsohn, Chairman
Public Arbitrator

2/12/97


Jerry Schuchman
Public Arbitrator

Jerry Brown
Industry Arbitrator

Date Decision Served by NASD Regulation: February 25, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Sheldon Seligsohn, Chairman
Public Arbitrator

Jerry Schuchman
Public Arbitrator

2/24/97

Jerry Brown

Jerry Brown
Industry Arbitrator

Date Decision Served by NASD Regulation: February 25, 1997