

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert Russoniello

96-02877

Name of Respondent

Securities Research, Inc.

REPRESENTATION

For Claimant: Claimant's father, Joseph P. Russoniello (uncompensated "attorney in fact" representative).

For Respondent: Layne Verebay, Esq., Freedman & Verebay, P.A., North Miami, FL.

CASE INFORMATION

Statement of Claim filed: July 1, 1996. Claimant's Uniform Submission Agreement signed on July 1, 1996. Claimant's Amended claim filed 12/20/96; Corrected claim filed 1/20/97; more Specific Statement filed 10/31/97.

Respondent's Motion to Dismiss filed on August 7, 1996. Respondent's Answer and Affirmative Defenses filed on January 1, 1997. Respondent's Uniform Submission Agreement signed on October 27, 1997.

HEARING INFORMATION

On October 21, 1997 and November 12, 1997, in Tampa, Florida, hearings lasting two (2) sessions were conducted. A prehearing conference was conducted by telephone on December 6, 1996.

CASE SUMMARY

The Claimant alleged that on June 3, 1992 while he was a 19-year old college student earning \$5.50 per hour from part time employment, he opened a cash account with the Respondent and purchased 2000 shares of Oak Industries stock at 2-1/2. The Claimant further alleged that thereafter the Respondent allowed him to make additional purchases and sales of various stocks, some of which, unknown to Claimant, were in bankruptcy reorganization and were otherwise unsuitable investments for a young person in his financial circumstances. The Claimant also alleged that between June 1992 and March 8, 1993, the Respondent negligently allowed him to purchase various stock option contracts before he had entered into any written option agreement with the Respondent. Claimant alleged that he lost approximately \$6,400 on stock options purchased during this period.

The Claimant also alleged that he and the Respondent entered into a written "Option Agreement" on or about March 8, 1994, but that thereafter the Respondent continued wrongfully and negligently to allow him to engage in an unsuitable pattern of stock and stock option trading including a very small amount of trading on margin in his account, resulting in further losses. Claimant alleged that his strategy was unsuitable for a young and inexperienced investor like himself and ultimately resulted in further net losses. Moreover, Claimant alleged that all margin trading was improper and should not have been allowed by the Respondent because Claimant never entered into any margin agreement with the Respondent at any time.

The Claimant alleged that the Respondent's conduct constituted common law negligence, and a breach of Respondent's fiduciary duty to Claimant. Claimant also alleged that under the Uniform Commercial Code Section 3-401(1) a contract for the purchase or sale of securities is not enforceable unless there is some writing signed by the parties.

Respondents denied all liability and alleged that all of the questioned trades in the Claimant's account were done with the explicit directions and instructions of the Claimant, and that all trades were unsolicited. Respondent also initially alleged that Claimant's claims were all time barred. However, Respondent withdrew this affirmative defense at the arbitration hearing.

RELIEF REQUESTED

Claimant requested compensation for losses from regular securities trading in an amount of \$15,941.00, and additional compensation for losses from trading options in the approximate amount of \$6,400 incurred before the signing of an option agreement plus \$1,223 lost subsequently, making a subtotal of \$7,623.00 for option trading losses and a grand total claim of \$23,564.00.

Respondents requested that the claim be denied and that Claimant be required to pay all costs and expenses associated with the arbitration, including Respondent's reasonable attorney's fees in the amount of \$6,000.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent moved to dismiss the case. The arbitrator denied this motion.
2. Claimant moved on August 7, 1996 that Respondent be barred from presenting any defenses to the statement of claim for failure to file a timely answer. Respondent filed a response to this motion on September 9, 1996. This motion was also denied.
3. Claimant moved on September 11, 1996 that Respondent should be barred from presenting any defenses for failure to file a timely Uniform Submission Agreement, contrary to the requirement of the NASD Arbitration Code. Respondent failed to file any response to this motion, and failed to file any Uniform Submission Agreement for more than a full year after the motion was made and filed by the Claimant's representative. At the outset of the arbitration hearing on October 21, 1997, Claimant renewed this motion. Respondent's counsel argued in response that the failure to execute and file a Uniform Submission Agreement was merely inadvertent, and was the fault of counsel rather than that of the Respondent, and that Claimant had not been prejudiced thereby; and stated on the record that the Respondent would be bound by the arbitrator's decision. Only after the arbitrator insisted that the arbitration could not proceed further without a signed arbitration agreement did the Respondent finally execute and file the Claimant's proffered Uniform Submission Agreement on October 27, 1997. Thereupon, the arbitration hearing was re-convened and the arbitration was concluded on November 12, 1997.

Respondent clearly does not appreciate the critical importance of the role which the Uniform Submission Agreement now plays in arbitration award enforcement proceedings, particularly in light of the recent decisions of the federal courts. Under the Supreme Court's decisions in Mastrobuono v. Shearson Lehman Hutton, Inc., 115 S. Ct. 1212 (1995) and First Options of Chicago, Inc. v. Kaplan, 115 S. Ct. 1920 (1995), the post-dispute arbitration agreement, which ordinarily supersedes any prior pre-dispute arbitration agreement, constitutes the contract between the parties which defines the very nature and scope of the arbitrator's powers and duties. The courts are required to construe this contract in order to determine, for example, whether or not the parties have agreed to allow the arbitrator(s) to award punitive damages, and whether the law of a particular state is to be applied. If a brokerage firm merely acquiesces to the NASDR's other requests, filing an answer and agreeing to be bound by the arbitrator's decision but not executing the proffered Uniform Submission Agreement, it may later claim that it agreed only to proceed under some prior pre-dispute arbitration agreement signed by its customer. In that case, the customer will, at a minimum, have to meet that argument in court. Since such contract disputes often turn on subtle factual nuances unique to each case, the outcome could not be reliably predicted. Thus, instead of having a clear written agreement upon which both parties have agreed to submit the dispute, a prevailing customer would be faced with trying to enforce an award based upon two separate written agreements, the later of which was signed only by the customer, even though the brokerage firm should have been required to sign it under NASDR arbitration rules---provided the dispute was deemed arbitrable. This would put the customer at an unfair disadvantage not contemplated by the NASDR arbitration rules upon which the customer must be able to rely. Even though, in this case, a Uniform Arbitration Agreement was ultimately submitted, the inordinate and unexplained delay was so great that severe sanction is plainly required to insure future timely compliance with this critical NASDR arbitration rule.

As a sanction for Respondent's failure to file a Uniform Submission Agreement until more than one year after such filing was due, more than one year after Claimant first raised the issue in a motion, after at least two written requests from the NASDR staff and, finally, after specific direction from the arbitrator, all of Respondent's defenses shall be stricken and all testimony adduced in support thereof will be completely disregarded.

4. The Respondent moved for an award of attorney's fees in the amount of \$6,000. This motion is denied.

AWARD

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

1. Respondent is found liable for negligently accepting and processing option and margin trades without first obtaining a written option or margin agreement contrary to its own approved firm policy and shall pay to Claimant the sum of \$6,400.00, plus pre-award interest at the rate of ten percent per annum compounded monthly from August 8, 1994 to the date of this award. Post-award interest shall accrue and be paid on the entire amount at the same rate from the date of this Award to the date of payment to of this Award.
2. Claimant's additional claims are denied because Claimant failed to produce evidence to demonstrate that Respondent actually recommended any of the other trades in question or that Respondent knew or should have known at the time of the trades in question that Claimant was so unintelligent,

unsophisticated, disabled, peculiarly vulnerable, lacking in liquid or total net worth and/or otherwise unsuitable that he could not be allowed to trade stocks or options to the extent that he did. Claimant's father apparently still thinks of his son as a child deserving per se of protection from all of the world's dangerous temptations but the fact is that under Florida law, he is of legal age and has the same rights and responsibilities as any other adult in similar circumstances with similar characteristics.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrator has assessed forum fees in the amount of \$900.00 (\$300.00 x 3 sessions).

Respondent is hereby assessed all forum fees totaling \$1000.00, of which \$600.00 is to be paid to the National Association of Securities Dealers Regulation, Inc. Respondent shall pay the Claimant \$400.00, such amount being the \$100.00 NASDR filing fee and the \$300.00 NASDR hearing session deposit previously paid by him to the NASDR.

Sole Arbitrator's Signature:

/S/

James D. Keeney, Esq.
Public Chairman

1/7/98

Date of Decision: _____