

AWARD

NASD Regulation, Inc.

In the matter of the Arbitration Between

Name of Claimant(s)

Michael Reutlinger
Aline Reutlinger

Arbitration
No. 96-03042

Name of Respondent(s)

Commonwealth Associates
Peter Fulton

REPRESENTATION

For Claimants: Steven W. Strain, Esq., San Francisco, California

For Respondents: J.P. Wilson, Esq., Commonwealth Associates, New
York, New York

CASE INFORMATION

Statement of Claim filed: July 5, 1996

Claimants' Submission Agreement signed: July 3, 1996

Joint Statement of Answer filed by Respondents: October 18, 1996

Respondents' Submission Agreements signed as follows:

Peter Fulton: October 15, 1996

Commonwealth Associates: October 16, 1996

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

March 21, 1997 (one session)

April 11, 1997 (one session)

Hearing Date(s)/Session(s): April 14, 1997 (two sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimants alleged the following claims with respect to their investments in various securities: 1) Unsuitability; 2) Unfair Member Practices; 3) Fraud; 4) Elder Abuse; 5) Breach of Fiduciary Duty; and 6) Failure to Supervise.

Respondents denied Claimants' allegations and claims with respect to Claimants' investments. Respondents alleged that Claimants have failed to state a cause of action, given the following: 1) all trades were appropriate and effected in accordance with Claimants' investment objectives, their investment experience and their rather high tolerance for risk, given their financial resources; 2) all facts which were important to Claimants' investment decisions were clearly communicated; 3) the Respondents properly handled Claimants' joint account and engaged in fair dealing at all times relevant; and 4) Respondent Commonwealth Associates properly, diligently and adequately supervised Respondent Fulton at all times relevant, pursuant to a reasonable system of policies and procedures reasonably designed and effectively implemented to prevent and detect unlawful conduct. Respondents also alleged that any damages allegedly suffered by Claimants have no causal relationship with any act committed by, or legally attributable to, the Respondents. Respondents further alleged that all injuries allegedly suffered or sustained by Claimants, if any, were caused, in whole or part, by their negligence and by market forces outside of the Respondents' control while their brokerage account was maintained at Respondent Commonwealth Associates. Respondents further alleged that Claimants also failed to mitigate whatever losses they suffered; Claimants, through their actions, conduct and deeds, are also estopped from maintaining this action and are barred by the doctrines of ratification, affirmance and waiver from making the allegations and claims concerning the numerous companies referenced in Claimants' Claim; Claimants claims are barred, in part or in whole, by their assumption and acceptance of the risk of loss and by the applicable statute of limitations; and Claimants are not entitled to attorneys fees, pre-judgement interest or costs under

any statute and are not entitled to punitive damages as a matter of law.

RELIEF REQUESTED

Claimants requested:

1. Complete rescission and restitution whereby Respondents return to Claimants the \$121,991.50 deposited into Claimants' account in exchange for the Claimants' return of the \$61,412.81 and the Health Management Inc. and Happiness Express stock certificates. This produces a net recovery by the Claimants of \$60,578.69;
2. Compensatory damages pursuant to the fraud claim;
3. Punitive damages in the amount of \$35,000.00. Claimants asserted that the panel has the power to treble such damages pursuant to the elder abuse claim;
4. Attorney's fees and costs pursuant to the elder abuse claim; and
5. Such other relief as the arbitration panel deems to be just and appropriate.

Respondents requested:

1. Dismissal of Claimants' Statement of Claim in its entirety, with prejudice;
2. Awarding Respondents their attorney's fees and other costs and expenses; and
3. Such other relief as the arbitration panel deems appropriate, just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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. (NASDR).

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. All claims by Claimants, including the claims for punitive and treble damages, are dismissed.

2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASDR shall retain Claimants' hearing session deposit in the amount of \$500.00. Forum fees shall be split between Claimant and Commonwealth Associates and are calculated as follows:

Two pre-hearing sessions @ \$300.00/session	=	\$ 600.00
Two hearing sessions @ \$500.00/session	=	<u>\$1,000.00</u>
Total fees assessed	=	\$1,600.00
Claimant's share (50%)	=	\$ 800.00
Credit for hearing deposit	=	\$ 500.00
Balance due	=	\$ 300.00
Commonwealth Associates' share (50%)	=	\$ 800.00
Balance due	=	\$ 800.00

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Alvin L. Fishman, Esq.	Public Arbitrator
Daniel M. Yamshon, Esq.	Public Arbitrator
Lynda S. Diehl	Industry Arbitrator

Concurring Arbitrators' Signatures

Alvin L. Fishman, Esq.

Daniel M. Yamshon, Esq.

Lynda S. Diehl
Lynda S. Diehl

Date of Decision: 4/14/97

Date Served: April 28, 1997

Concurring Arbitrators' Signatures



Alvin L. Fishman, Esq.

Daniel M. Yamshon, Esq.

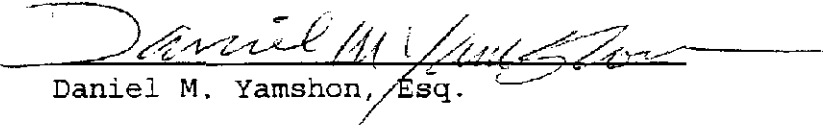
Lynda S. Diehl

Date of Decision: 4-21-97

Date Served: April 28, 1997

Concurring Arbitrators' Signatures

Alvin L. Fishman, Esq.



Daniel M. Yamshon, Esq.

Lynda S. Diehl

Date of Decision: 4/14/97

Date Served: April 28, 1997