

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Anne N. Perry

and

96-03057

Name of Respondent

D.E. Frey & Co., Inc.
David Ramsdale

REPRESENTATION OF PARTIES

Anne N. Perry ("Claimant") was represented by William D. Nelson, Esq., Slivka Robinson Waters & O'Dorisio, P.C., Denver, Colorado.

D.E. Frey & Co., Inc. ("Respondent D.E. Frey") was represented by Mark J. Appleton, Esq., D.E. Frey & Co., Inc., Denver, Colorado.

David Ramsdale ("Respondent Ramsdale") did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about July 17, 1996. Submission Agreement of Claimant Anne N. Perry was signed on July 11, 1996.

Statement of Answer was filed by Respondent D.E. Frey & Co., Inc. on or about August 2, 1996. Submission Agreement of Respondent D.E. Frey & Co., Inc. was signed on August 22, 1996 by Mark Appleton.

Respondent David Ramsdale did not file a responsive pleading in this matter.

HEARING INFORMATION

The hearing was held on Tuesday, February 18, 1997 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondent Ramsdale:

1. opened a margin account without her knowledge or authorization;
2. misrepresented her investment objectives, net worth and income on the new account forms;
3. engaged in unauthorized trading in her account by purchasing a total of 4,000 shares of Scios-Nova, Inc., sale of 200 shares of Merck, and the purchase and sale of 2,500 shares of Shoe Carnival; and
4. borrowed a total of \$7,500 from her.

Claimant further alleged that Respondent D.E. Frey hired Respondent Ramsdale knowing that he had been terminated from PaineWebber, Inc. for borrowing money from customers. It was alleged that the acts of respondents constituted violations of the Colorado Securities Act; Colorado Consumer Protection Act; breach of fiduciary duty; negligence; misrepresentation; and fraud.

Respondent D.E. Frey denied all substantive allegations contained in the Statement of Claim. Respondent D.E. Frey specifically stated that Claimant had held herself out as a professional business woman; was in her early thirties; had been trading stocks and bonds for at least five (5) years and had securities accounts at other brokerage firms. It was also stated by Respondent D.E. Frey that Claimant made all investment decisions in her account; had received trade confirmations for all of the purchases in her account; and never complained about the transactions in her account.

Respondent Ramsdale did not file a responsive pleading.

RELIEF REQUESTED

Claimant requested the entry of an award for damages in an amount to be proven at the hearing but not less than \$30,000, costs of investigation and prosecution and reasonable attorneys' fees under C.R.S. §6-1-113(2)(b) and C.R.S. §11-51-604 and for such other and further relief as the arbitrators deem appropriate.

Respondent D.E. Frey requested that the claims asserted against it be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file the undersigned arbitrators have determined that Respondent David Ramsdale has been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent David Ramsdale had received due notice of the hearing as required

under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent David Ramsdale did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

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. Respondent David Ramsdale shall be and hereby is liable for and shall pay to the Claimant Anne N. Perry the sum of \$7,275 (seven thousand two hundred seventy five dollars) for unpaid loans including interest.
2. Respondent David Ramsdale shall be and hereby is liable for and shall pay to the Claimant Anne N. Perry the sum of \$7,770 (seven thousand seven hundred seventy dollars) as attorneys' fees. This award of attorneys' fees is made pursuant to C.R.S. §6-1-113(2)(b) and C.R.S. §11-51-604.
3. Respondents D.E. Frey & Co., Inc. and David Ramsdale shall be and hereby are jointly and severally liable for and shall pay to the Claimant Anne N. Perry the sum of \$1,533 (one thousand five hundred thirty three dollars) as costs incurred in this matter.
4. Respondents D.E. Frey & Co., Inc. and David Ramsdale shall be and hereby are jointly and severally liable for and shall pay to the Claimant Anne N. Perry the sum of \$6,400 (six thousand four hundred dollars) as compensatory damages for the Scios-Nova and Shoe Carnival transactions.
5. Respondents D.E. Frey & Co., Inc. and David Ramsdale shall be and hereby are jointly and severally liable for and shall pay to the Claimant Anne N. Perry the sum of \$8,100 (eight thousand one hundred dollars) as compensatory damages for the Merck liquidation.

6. In making the above awards, the undersigned arbitrators have determined that the Claimant Anne N. Perry is not liable for any outstanding debit balance in her account.
7. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$400 = \$800 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$100 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Anne N. Perry. Respondents D.E. Frey & Co., Inc. and David Ramsdale shall be and hereby are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$400 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$200 previously paid by Respondent D.E. Frey & Co., Inc. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

/s/ Charles G. Michaels, Esq.
Charles G. Michaels, Esq.
Public Arbitrator, Presiding Chair

Dated: February 18, 1997

/s/ Harry Roger McConnell
Harry Roger McConnell
Public Arbitrator

February 18, 1997

/s/ Robert I. Kessler
Robert I. Kessler
Industry Arbitrator

February 18, 1997