

NASD Arbitration & Mediation

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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert Baron

96-03165

Name of Respondent

Jim Hughes

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers Regulation, Inc. on July 23, 1996 claimant Robert Baron ("claimant"), who appeared Pro Se, alleged that in December 1994, he invested \$10,000 with A.G. Edwards & Sons, Inc. ("A.G. Edwards"), through his broker Jim Hughes ("respondent"). Claimant further alleged that he had informed respondent that he was interested in aggressive, long term investment. Claimant also alleged that from December to May, compared to the general growth of the market during that period, there was minimal return on the investments which were purchased under respondent's advice, with the exception of Group Television, which he (claimant) had requested. Claimant contended that some time after May he became ill and was unable to take active part in the management of his portfolio. Claimant further contended that during that period respondent placed his investment in Fossil Inc. without his input, and later made purchases on margin without communicating with him. Claimant also contended that respondent knew that because of his health he depended on the funds in his account. Claimant further contended that respondent's management of his funds at such a time, bordered on malfeasance, and for that reason respondent is liable for the difference in his account before and after the sale of Fossil, Inc.

Respondent Jim Hughes, through his representative, and in-house counsel of A.G. Edwards, Jeff Jamieson, Esq., maintained that respondent opened his account on December 12, 1994 and made one deposit in the amount of \$12,500.00. Respondent further maintained that confirmations and monthly statements were sent to claimant for the following transaction: On December 9, 1994, purchased 600 shares of Apple South Inc. at 13 1/4 and sold on June 7, 1995 for a \$1,909.59 profit; On March 21, 1995 purchased 250 shares of Grupo Televisa at 14 7/8 and sold on May 1, 1995 for \$1,082.59 profit; On May 11, 1995 purchased 300 shares of American Eagle Outfitters, Inc at \$16 and sold on July 14, 1995 at \$16 3/4 with a \$53.68 loss; On June 7, 1995 purchased 56,000 U.S. Treasury Security 11-15-95 ("zero coupon bonds") at \$19.052 and sold on October 15, 1995 with \$222.48 profit. Respondent also maintained that with the exception of American Eagle Outfitters, Inc., claimant's account at A.G. Edwards had been profitable.

Respondent contended that claimant informed him that he wished to withdraw funds from his account. Respondent averred that his advice to claimant was to sell positions or borrow against positions in the account. Respondent further contended that because claimant was unwilling to sell positions in his account, he executed a Client Agreement which would allow him to borrow against his account. Respondent also contended that on the same day he executed the Client Agreement, he withdrew \$3,000.00 from his account. Respondent asserted that on November 15, 1995 claimant withdrew another \$2,000.00 and created a margin debit balance in his account. Respondent further asserted that the margin debit balance and resulting interest charges were detailed in claimant's monthly account statements.

Respondent further maintained that he is not responsible for claimant's alleged loss and unauthorized trading regarding his investment in Fossil Inc., since claimant failed to complain in a timely fashion after receipt of written confirmations. Respondent maintained that he spoke with claimant prior to the following purchases of Fossil, Inc.: On August 13, 1995, 100 shares at \$15 1/4 and on September 29, 1995, 100 shares at \$14 7/8. Respondent further maintained that 1,100 shares of Fossil Inc. were sold on January 24, 1996 at \$6 5/8 for a total amount of \$7,170.84. Respondent also maintained that over a period of time beginning September 29, 1995 through December 29, 1995, the price per share of Fossil Inc. was reported on claimant's monthly statements as follows: \$13 1/8, \$11 1/4, \$9 3/8 and \$8 3/8. Respondent contended that claimant had numerous opportunities to mitigate his losses, but chose not to do so and cannot now seek reimbursement. Respondent further contended that it was not unsuitable to invest in one position in an account of that size, given claimant's admission that the investing in his account was to be aggressive.

In response to the respondent's Statement of Answer, claimant maintained that the margin purchasing is speculative, that respondent made no effort to contact him prior to the Fossil, Inc. purchases and that the signature on the referenced agreement "is definitely not mine."

RELIEF REQUESTED

Claimant Robert Baron requested \$5,968.15 plus punitive damages.

Respondent Jim Hughes requested that the Arbitrator find in his favor and award all costs and expenses associated with this arbitration.

AWARD

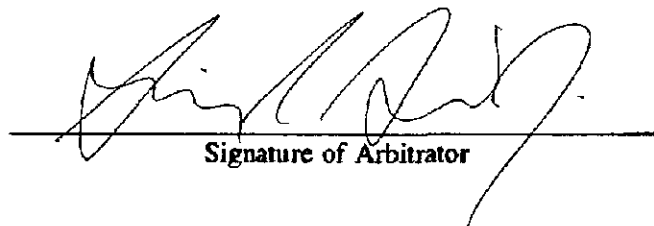
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Sidney R. Barrett Jr. Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Robert Baron on July 19, 1996 and Respondent Jim Hughes on September 13, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of claimant Robert Baron against respondent Jim Hughes are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Robert Baron shall be retained by the NASD, Inc. Respondent Jim Hughes shall pay to the Claimant \$75.00 as reimbursement for one half of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

I, Sidney R. Barrett Jr. Esq., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: December 24, 1996