

AWARD

NASD REGULATION, INCORPORATED OFFICE OF DISPUTE RESOLUTION

In the Matter of Arbitration Between

James Buskirk,

Claimant,

and

No. 96-03313

**Thomas Lonergan, Christopher Holtkamp, Peter Lucina,
and Tamaron Investments, Inc.,**

Respondents.

REPRESENTATION OF PARTIES

For Claimant: James Buskirk ("Buskirk") was represented pro se.

For Respondents: Thomas Lonergan ("Lonergan") was represented pro se.

Christopher Holtkamp ("Holtkamp") and Peter Lucina ("Lucina") were represented by Kenneth F. Berg, Esq., located in Chicago, Illinois.

Tamaron Investments, Inc. ("Tamaron") was represented by Luis A. Toro, Esq. of Senn Lewis Visciano & Strahle, located in Denver, Colorado.

CASE INFORMATION

Claimant's Statement of Claim was filed on: August 2, 1995.

Claimant's Submission Agreement was signed on: September 10, 1996.

Lonergan's Statement of Answer and Motion to Dismiss was filed on: December 5, 1996.

Lonergan's Submission Agreement was signed on: December 2, 1996.

Holtkamp and Lucina's Statement of Answer was filed on: December 17, 1996.

Holtkamp's Submission Agreement was signed on: December 17, 1996.

Lucina's Submission Agreement was signed on: December 17, 1996.

Tamaron's Statement of Answer was filed on: February 17, 1997.

Tamaron did not submit a properly executed submission agreement.

HEARING INFORMATION

Pre-hearing conferences: None Held.

Hearing dates and sessions: August 26, 1997 for three (3) sessions.

The hearing was held in: Chicago, Illinois.

CASE SUMMARY

Buskirk alleged that Holtkamp and Lucina, account executives at Tamaron's Chicago office, and Lonergan, a branch manager of Tamaron's Chicago office, are liable for failing to follow Buskirk's instructions and for unauthorized trading. According to Buskirk, he and his wife opened a joint account with Tamaron on January 4, 1992, and he opened an individual account later that year. Buskirk asserted that he instructed Holtkamp and Lucina that there was to be no buying and selling of stocks on margin and that he was to be fully apprised of all stock transactions. Allegedly, on August 26, 1993, Holtkamp and Lucina bought fifteen (15) units of UTS-CVD Financial Corporation ("UTS-CVD") at a unit price of \$5,750.00 for a total purchase price of \$86,250.00 on margin, which was never communicated to Buskirk. Buskirk further alleged that on August 27, 1993, the units were converted into 78,000 shares of stock, Holtkamp and Lucina sold 3,000 shares of UTS-CVD on October 25, 1993, and the balance of the account was sold in three separate 25,000 share blocks on November 8, 24, and 26. In addition, Buskirk claimed that in late November, Lonergan called to inform him that Tamaron was selling off UTS-CVD in order to meet certain margin calls in his account. Buskirk also alleged that many other securities were purchased on margin without his consent and were unauthorized for his account given his prior instructions and investment objectives. Based upon the above allegations, Buskirk asserted that Tamaron, Holtkamp, and Lucina violated: (1) Art. III, § 2 of the NASD Rules of Fair Practice; (2) their fiduciary duties; (3) Art. III, § 1 of the NASD Rules of Fair Practice; (4) their duty not to act in a negligent manner; (5) the principles of common law fraud; and (6) the Illinois Consumer Fraud Act. In addition, Buskirk asserted that Tamaron and Lonergan violated their duty to supervise Holtkamp and Lucina as required by Art. III, § 27 of the NASD Rules of Fair Practice.

Holtkamp and Lucina denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. According to Respondents, Buskirk executed a Margin Agreement because he wanted to purchase speculative securities on margin on September 9, 1992, and until February 1993, Buskirk made numerous and regular margin purchases. Buskirk also made all of the trading decisions for his account and received confirmations of each trade. Holtkamp and Lucina further stated that Buskirk purchased 15 units of UTS-CVD for \$86,250 on August 26, 1993 as a cash purchase, not margin and that Buskirk made the decision to purchase the units and tendered a check for the entire purchase price. These 15 units of UTS-CVD consisted of 75 bonds and 3,000 shares of Conversion Financial, Incorporated common; Respondents stated that the 3,000 shares of

common were sold on October 25, and blocks of 25 bonds were sold on November 8, 24, and 26, 1993. Additionally, Holtkamp and Lucina asserted various affirmative defenses.

Lonerger also denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on his part. Lonerger contended that if Buskirk's account was liquidated because of a maintenance call, it was done so pursuant to the authorization given to Tamaron's correspondent, RKS, Incorporated, by Buskirk's signed a margin agreement. Lonerger noted that in all the time Buskirk had an active account with Tamaron, Buskirk never submitted a written or verbal complaint concerning the activities in his account at Tamaron or his dissatisfaction with his brokers Holtkamp and Lucina. According to Lonerger, Buskirk has not pled any facts that even remotely indicate that Lonerger failed in any respect to supervise.

Respondent Tamaron denied the material allegations of the Statement of Claim, asserting that no employee exercised discretionary authority over Buskirk's account; Buskirk was fully informed of all account activities; and that Buskirk represented that trades not in accord with his stated investment goals would be due notice to Tamaron of the alteration of his investment goals and objectives. In addition, Tamaron asserted several affirmative defenses.

RELIEF REQUESTED

Buskirk requested an award for money lost in the two accounts; the margin interest charged; a reasonable return on his investment; his hearing and filing fees and his attorneys' fees; and punitive damages of \$50,000.00.

Holtkamp and Lucina requested that the claims asserted against them be dismissed with prejudice. Lonerger requested that the claims asserted against him be dismissed in their entirety with prejudice and that he be awarded his costs and fees associated with defending this arbitration. Tamaron requested that the claims be denied and that Tamaron be awarded attorneys' fees and costs for defending this action.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to a settlement agreement, Buskirk dismissed all of his claims against Tamaron Investments, Inc. with prejudice.

On December 5, 1996, Thomas Lonerger moved to dismiss all claims asserted against him. On January 9, 1997, the panel of arbitrators denied this motion.

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 Regulation, Incorporated 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. Respondents Christopher Holtkamp and Peter Lucina are jointly and severally liable for and shall pay to Claimant James Buskirk compensatory damages of \$20,000.00;
2. All claims against Respondent Thomas Lonergan are dismissed with prejudice and denied in their entirety;
3. The claims for punitive damages are dismissed and denied;
4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
5. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed: Three (3) hearing sessions x \$750.00 per session = \$2,250.00.

Pursuant to §10332(c) of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$200 and shall retain as forum fees the hearing session deposit of \$750.00 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by Claimant James Buskirk. Respondents Christopher Holtkamp and Peter Lucina are jointly and severally liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution forum fees of \$1,500.00 (= \$2,250.00 total forum fees - \$750.00 hearing session deposit by James Buskirk). In addition, Respondents Christopher Holtkamp and Peter Lucina are jointly and severally liable for and shall pay to Claimant James Buskirk the sum of \$750.00 as reimbursement of the hearing session deposit retained by the Office of Dispute Resolution.

Pursuant to § 10333 of the Code, Respondent Tamaron Investments, Incorporated is liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution the member surcharge of \$350.

Fees are payable to the NASD Regulation, Incorporated Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Dated:

/s/ John J. Enright, Esq.
John J. Enright, Esq.
Chairperson
Public Arbitrator

October 17, 1997

/s/ Stephen C. Esposito, Esq.
Stephen C. Esposito, Esq.
Public Arbitrator

October 14, 1997

/s/ Steven W. Satkamp
Steven W. Satkamp
Industry Arbitrator

October 13, 1997

For NASD use only:

Date Award was served on the parties: October 20, 1997