

NASD REGULATION, INC. AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Carl F. DeVivo

96-03322

Name of Respondents

Robyn Jeffrey
Prime Charter Ltd.

REPRESENTATION

Claimant Carl DeVivo ("Claimant") was represented by David E. Robbins, Esq. of the law firm of Kaufmann, Feiner, Yamin, Gildin & Robbins LLP, New York, NY.

Respondent Robyn Jeffrey ("Jeffrey") was represented by Maureen A. Porette of the law firm of Lehman & Eilen, Uniondale, NY.

Respondent Prime Charter Ltd. ("Prime Charter") was represented by Joshua C. Nathan, Esq. of the law firm of Rosenman & Colin LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed: August 1, 1996

Claimant's Submission Agreement signed on: July 13, 1996

Joint Statement of Answer filed by Respondents Jeffrey and Prime Charter (collectively referred to as "Respondents") on: September 18, 1996

Jeffrey's Submission Agreement signed on: September 18, 1996

Prime Charter's Submission Agreement was executed by Maureen A. Porette as in-house counsel and Director of Compliance on: September 18, 1996

HEARING INFORMATION

Pre-Hearing Conference:	March 24, 1997	one session
Hearing Dates:	June 26, 1997	two sessions
	June 27, 1997	two sessions
	October 9, 1997	two sessions

Hearing Location: NASD Regulation, Inc., Office of Dispute Resolution ("NASD Regulation") in New York, NY.

CASE SUMMARY

Claimant alleged, among other things, that he maintained accounts with Prime Charter and that Jeffrey was his broker from 1990 through late 1994. Claimant alleged breach of fiduciary duty, unauthorized trading and excessive trading by Jeffrey in Claimant's accounts at the offices of Prime Charter. Claimant alleged that Jeffrey took advantage of him by encouraging a personal relationship between them leading him to place trust in her. Claimant alleged that he had three accounts with Respondents and that a written Power of Attorney was executed on only one of these accounts. Claimant alleged that this written Power of Attorney, which Jeffrey recommended he sign, was used improperly to engage in discretionary trading in all three accounts. Claimant alleged that over a 4 year period over \$9,000,000 of trading took place in accounts with an average equity of \$200,000 and that at no time did Jeffrey discuss these purchases and sales with Claimant. Claimant further alleged that Jeffrey took advantage of Claimant's trust to trade excessively in Claimant's accounts and alleged that he could not understand his monthly statements and so remained unaware of his unrealized losses. Claimant alleged that Jeffrey's primary motivation for engaging in discretionary trading in all three of his accounts was to generate commissions for Respondents, which commissions, margin interest and transaction fees resulted in unrealized losses for Claimant. Claimant alleged that Respondents generated disclosed commissions in the amount of \$139,000 and undisclosed compensation in the amount of \$60,000. Claimant further alleged that Prime Charter failed to supervise the activities of Jeffrey. Claimant alleged that he was unaware of the losses he had incurred because Jeffrey never discussed them with him nor did she ever discuss her trading strategy with Claimant. Claimant alleged that it was not until he took his account statements to a financial advisor at the firm of IDS that Claimant became aware of the losses in his accounts and that his portfolio had been mismanaged.

Respondents categorically denied all allegations of wrongdoing asserted by Claimant and maintained, among other things, that Claimant was dissatisfied with the performance of his investments in the market even though he had signed all necessary documentation showing that his objectives were businessman's risk and speculation. Respondents maintained that Jeffrey's investment strategy was consistent with technical analysis. Respondents maintained that discretionary papers were signed for one of Claimant's accounts and that such discretion was utilized only within that authorized account. Respondents further maintained that Jeffrey discussed each and every trade with Claimant and that Claimant authorized all trades and kept detailed records of all transactions. Respondents maintained that the majority of realized losses were incurred not by Respondents but by IDS, Claimant's current broker. Respondents maintained that Claimant was simply a disappointed investor.

RELIEF REQUESTED

Claimant at the hearing requested damages in the amount of \$365,015 for the net out of pocket losses suffered by Claimant.

Respondents requested that the claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

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 NASD Regulation.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Robyn Jeffrey and Prime Charter Ltd. are liable and shall pay to Claimant Carl F. DeVivo the sum of \$13,973.76 in compensatory damages, no pre-judgement interest is awarded.
2. That the parties shall bear their respective costs, including attorney's fees, expert fees and other expenses other than those specifically provided for herein.
3. That any and all relief not specifically addressed above is hereby denied in its entirety.

OTHER COSTS AND FEES

Respondent Prime Charter owes administrative costs for tape duplication in the amount of \$105. This fee is payable to NASD Regulation, Inc.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation's Code of Arbitration Procedure ("Code"), the following Forum Fees are assessed:

(1 pre hearing conference x \$300) = (6 hearing sessions x \$750) = \$4,800
Member Surcharge Fee pursuant to Rule 10333 = \$350

Forum Fees are assessed equally against Claimant Carl DeVivo and Respondents Robin Jeffrey and Prime Charter Ltd.

Claimant is assessed forum fees in the amount of \$2,400, however, Claimant is entitled to offset this amount with his hearing session deposit of \$750 so that the amount due from Claimant as forum fees is \$1,650. Respondents Prime Charter and Robyn Jeffrey are jointly and severally assessed forum fees in the amount of \$2,400. Respondent Prime Charter surcharge in the amount of \$350 is due and owing.

Fees are payable to the NASD Regulation, Inc.

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DATE SIGNED

Oct 29, 1997

CONCURRING ARBITRATORS' SIGNATURES



James P. O'Neill Esq. Chairperson
Public Arbitrator

Kenneth M. Felder - Panelist
Public Arbitrator

Herbert Launer - Panelist
Industry Arbitrator

Date Award Served by NASD Regulation, Inc.

November 11, 1997

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 29th day of OCTOBER 1997, before me personally appeared **James P. O'Neill, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



CHARLES D. KRIEG
Notary Public, State of New York
No. 02KR5038808
Qualified in Nassau County
Commission Expires Feb. 27, 1999

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DATE SIGNED

CONCURRING ARBITRATORS' SIGNATURES

James P. O'Neill Esq., Chairperson
Public Arbitrator

11/1/97

Kenneth M. Felder
Kenneth M. Felder - Panelist
Public Arbitrator

Herbert Launer - Panelist
Industry Arbitrator

Date Award Served by NASD Regulation, Inc. November 11, 1997

STATE OF: New York
COUNTY OF: Westchester

S.S.:

On this 1st day of November, 1997, before me personally appeared **Kenneth M. Felder** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

David S. Flom

DAVID S. FLOM
~~Notary Public~~ Public, State of New York
No. 4770634
Qualified in Westchester County
Commission Expires ~~March 30, 1998~~ 8/31/98

DATE SIGNED

CONCURRING ARBITRATORS' SIGNATURES

James P. O'Neill Esq., Chairperson
Public Arbitrator

Kenneth M. Felder - Panelist
Public Arbitrator

11/11/97

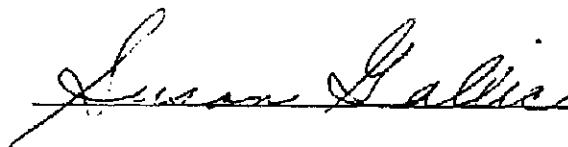

Herbert Launer - Panelist
Industry Arbitrator

Date Award Served by NASD Regulation, Inc. November 11, 1997

STATE OF: New York
COUNTY OF:

S.S.:

On this // day of //, 1997, before me personally appeared **Herbert Launer** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



SUSAN E. GALLIE
NOTARY PUBLIC, State of New York
No. 4868470
Qualified in Nassau County
Commission Expires August 25, 1998

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