

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Herman Drauche

96-03710

Name of Respondents

Janney Montgomery Scott Inc.
Kurt R. Saeger

REPRESENTATION

Claimant Herman Drauche ("Claimant") was represented by Anthony J. Horn, Esq., Philadelphia, PA.

Respondents Janney Montgomery Scott ("JMS") and Kurt Saeger ("Saeger") was represented by Paula Shaffner, Esq., Saul Ewing Remick and Saul, Philadelphia, PA.

CASE INFORMATION

The Statement of Claim was filed August 27, 1996.

Claimant's Uniform Submission Agreement was signed June 14, 1996.

The Joint Statement of Answer of JMS and Saeger (collectively "Respondents") was filed December 5, 1996.

JMS's Uniform Submission Agreement was signed October 21, 1996.

Saeger's Uniform Submission Agreement was signed January 21, 1997.

HEARING INFORMATION

Hearing Date/Sessions: May 28, 1997/two sessions

Hearing Location: Doubletree Hotel
Philadelphia, PA

CASE SUMMARY

Claimant alleged that in July, 1995, he began his broker-client relationship with Saeger, an employee of JMS. Claimant alleged that he had no prior investment knowledge or experience and that Respondents had been informed that his investment objective was income. Claimant alleged that he is a 73 year old widowed retiree receiving \$920.00 social security income per month. Claimant alleged that prior to retiring ten years ago, he was self-employed at a variety of jobs including cleaning rugs.

Claimant asserted that he had saved \$22,000.00 from his social security and purchased forty shares of Chris Craft stock. Claimant alleged that Saeger solicited and persuaded Claimant to authorize the

purchase and sale of Chris Craft, Readings and Bates, Iomega, Gandalf, Kurzweil, Sync Research and TWA shares on margin. Claimant further asserted that Saeger induced him to accomplish his goal of owning 1,000 shares of Chris Craft stock by purchasing the stock on margin. Claimant alleged that Saeger failed to inform him of the risks of trading on margin, and as Claimant had never traded on margin prior to meeting Saeger, Claimant received numerous margin calls which he was unable to meet. Claimant contended that Saeger made fraudulent representations and unsuitable investment recommendations and that JMS failed to adequately supervise Saeger in the management of Claimant's account.

Claimant alleged that Saeger engaged in unauthorized trading in Claimant's account when Saeger purchased 500 shares of Iomega on December 5, 1995 at a cost of \$22,677.00 and 1,000 shares of Gandalf on December 14, 1995 at a cost of \$19,432.00. Claimant alleged that Claimant had not authorized those purchases.

Claimant alleged that Respondents' actions constituted a breach of fiduciary duty, fraud, unsuitability, negligence, breach of contract, and a failure to supervise. In addition, Claimant alleged that Respondents' actions violated federal and Pennsylvania securities laws and the Pennsylvania Unfair Trade Practices and Consumer Protection laws.

Respondents denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that Claimant opened an account with JMS in July 1995 and immediately informed Saeger that he was interested in purchasing shares of Chris Craft Industries. Respondents maintained that Claimant informed Respondents that he had an estimated net worth between \$100,000.00 and \$250,000.00 and had owned his home for forty years. Respondents maintained that Claimant indicated that his investment objectives were speculation, as well as income and growth. In addition, Respondents maintained that Claimant made it clear that he was a knowledgeable and aggressive investor as well as an experienced and successful stock trader with years of experience.

Respondents maintained that the initial purchase of Chris Craft was made in a cash account and subsequently journalled to a margin account. Respondents maintained that Claimant was adamant about buying Chris Craft stock even though JMS's analyst had recommended against it in July 1995. Respondents maintained that for the next year Claimant was in JMS offices virtually every day and spent most of the day watching the ticker and reviewing Standard & Poor's sheets and JMS research reports as well as the Wall Street Journal. Respondents maintained that Claimant adopted an active trading pattern, frequently buying and selling stock for short-term gains and losses and showed absolutely no interest in diversification. Respondents further maintained that virtually all of the investment ideas in Claimant's account were Claimant's. Respondents maintained that there were no unauthorized trades in Claimant's account and any appearing of excessive trading in Claimant's account were the result of Claimant's trading decisions alone.

Respondents further raised the affirmative defenses of estoppel; laches and unclean hands; ratification; failure to mitigate; failure to state a claim upon which relief can be granted; and assumption of risk. Respondents maintained that any loss suffered by Claimant was the result of Claimant's own investment decisions and fluctuations of the market.

RELIEF REQUESTED

Claimant requested an award of \$23,000.00; interest on date of judgment, as well as any relief afforded under any consumer protection statutes or agreement including treble damages.

Respondents requested that the Statement of Claim be dismissed.

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 the NASD.

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. That the Statement of Claim is denied in its entirety.
2. That each party shall pay its own costs and expenses with the exception of the forum fees as indicated below.
3. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions x \$400.00 = \$800.00

Forum Fees are assessed to Claimant at \$400.00 and to Respondents, jointly and severally, at \$400.00. Claimant is to receive credit for the \$400.00 hearing session deposit previously submitted to the NASD Regulation, leaving Claimant with no further assessment due. Respondents have a net assessment due of \$400.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

CONCURRING ARBITRATORS' SIGNATURES

6/2/97

Robert F. Sanville

Robert F. Sanville, Chairman
Public Arbitrator

John Lovering Truscott
Public Arbitrator

Sean M. Sweeney
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 18, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

June 4, 1997

Robert F. Sanville, Chairman
Public Arbitrator

John Lovering Truscott
John Lovering Truscott
Public Arbitrator

Sean M. Sweeney
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 18, 1997

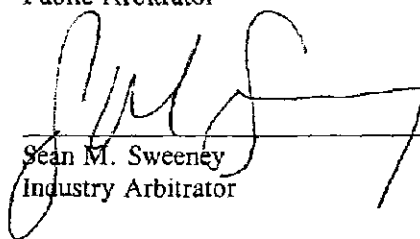
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CONCURRING ARBITRATORS' SIGNATURES

Robert F. Sanville, Chairman
Public Arbitrator

John Lovering Truscott
Public Arbitrator

6/12/97



Sean M. Sweeney
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 18, 1997