

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

MAMS Fund

96-03844

Name of Respondent

Berlind Securities Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 30, 1996, claimant MAMS Fund a partnership, through its General Partner Kenneth Stein ("claimant"), alleged that on July 1, 1996 he gave Harvey Silvester ("Silvester"), an Account Executive of respondent Berlind Securities, Inc., an order to sell 62 Digital Equipment Corp ("DEC") calls against his position. Claimant further alleged that his position was long 3600 shares of DEC and short 26 DEC puts. Claimant also alleged that Silvester, for no reason, only put in an order to sell 36 calls. Claimant contended that he never received a written margin call and as a result of Silvester's error, he was denied a profit of \$7,411.70.

Claimant alleged that again, on July 8, 1996 Silvester refused to sell 62 calls against his position which was long 5300 shares and short 9 puts. Claimant further alleged that Silvester only put in an order to sell 36 calls, which resulted in a loss of \$3,899.36. Claimant averred that the investment strategy of the fund was to sell covered options and eventually sell out of the money calls to recover any loss. Claimant asserted that on July 15, 1996, Silvester was given an order to sell his 40 Micron July 25 calls at \$1/16 good till canceled. Claimant further asserted that he lost \$250.00 as Silvester never placed the order and his Micron expired worthless. Claimant also asserted that because of the treatment he received, he was forced to transfer his account and was charged \$50.00 for doing so. Claimant contended that Silvester admitted his mistakes on July 12, 1996 when he sold 62 calls.

Respondent Berlind Securities, Inc., through its representative and President, Harvey Silvester maintained that respondent had the right to refuse the trades for whatever reasons it deemed appropriate. Respondent further maintained that it had more than enough reasons to refuse to accept all of the trades demanded by MAMS. Respondent also maintained that on June 17, 1996, there was a margin call for \$20,363.00 for the claimant's account. Respondent asserted that on more than one occasion, claimant was advised of the margin calls and of the due dates. Respondent also asserted that from June 18, 1996 through June 19, 1996 the margin call increased to \$27,451.00 and claimant failed to meet the calls as he promised. Respondent contended that given the history of claimant's account with its margin calls, claimant's promise to meet those calls and repeated failure to do so and, the volatility of the DEC stock, Silvester was concerned and was being prudent in refusing to accept claimant's order. Respondent further contended that as of July 8, 1996 there was still too much exposure in the account for the options trades demanded by the claimant.

Respondent asserted that it allowed claimant to sell 62 calls with a strike price of 40 on July 15, 1996, because the account was long 5300 shares of DEC due to an assignment of 1700 shares, of which it had become aware on July 9, 1996. Respondent further asserted that claimant's order to sell 40 Micron calls on July 15, 1996 was not executed due to the low price of the calls. Respondent also asserted that the final transaction in the account, prior to its transfer to Smith Barney, was the assignment of 900 shares of DEC, due to the short position of 9 puts. Respondent maintained by refusing to accept uncovered calls, it was protecting not only its own assets, but those of claimant as well.

RELIEF REQUESTED

Claimant MAMS Fund requested \$10,000.00 in actual damages.

Respondent Berlind Securities, Inc. requested that the Statement of Claim be dismissed in its entirety.

AWARD


Pursuant to Rule 10302 of the NASD Code of Arbitration Procedure, a single Public Arbitrator, James J. Fishman, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant MAMS Fund on September 12, 1996 and by Respondent Berlind Securities, Inc. on November 12, 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 MAMS Fund against respondent Berlind Securities, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by the Claimant MAMS Fund shall be retained by NASD Regulation, Inc. Respondent Berlind Securities, Inc. is liable and shall pay to the Claimant MAMS Fund \$75.00 as reimbursement for one half of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

I, **JAMES J. FISHMAN**, do hereby swear or affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed his instrument, which is my award.



Signature of Arbitrator

Date of Decision: March 6, 1997