

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Vijay S. and Vaishali V. Havaladar

96-03993

Name of Respondent

National Discount Brokers

REPRESENTATION

For Claimants Vijay S. Havaladar and Vaishali V. Havaladar ("claimants") appeared Adolph D. Seltzer, Esq., New York, New York.

For Respondent National Discount Brokers ("respondent") appeared David Robbins, Esq., of Kaufmann, Feiner, Yamin, Gildin & Robbins, New York, New York.

CASE INFORMATION

Statement of Claim filed: September 6, 1996.

Claimants' Submission Agreement signed on: September 18, 1996.

Statement of Answer filed by Respondent on November 7, 1996.

Respondent's Submission Agreement signed on: November 15, 1996.

HEARING INFORMATION

Hearing Date(s)/Sessions: April 8, 1996/Two Sessions
May 5, 1996/Two Sessions

Hearing Location: Offices of NASD Regulation, Inc.

CASE SUMMARY

Claimants alleged that Claimant Vijay Havaladar opened a joint account with his wife at respondent's firm. Claimants alleged that they would utilize a toll free number to discuss transactions in the account and would speak to various brokers and representatives of respondent. Claimants further alleged that, in July 1996, an inquiry was made with regard to the requirements for buying stock, writing covered call options on the stock, then selling the stock. Claimants alleged that they were advised that they would have to leave the entire proceeds of the sale of the stock in the account to cover the naked call options if they did

not buy back the calls in the transaction.

Claimants maintained that, in reliance upon this information, they purchased 8,000 shares of Iomega at \$28 3/4 per share for a total cost of \$229,899.96 on margin. Claimants alleged that they subsequently sold Iomega calls and received a premium of \$46,885.41. Claimants alleged that they were advised by a representative for respondent that they could sell their Iomega shares without buying back the calls, and, in reliance upon this information, subsequently sold the 8,000 shares of Iomega. Claimants alleged that the representative failed to advise them that this transaction would cause a margin problem in their account. Claimants alleged that they were advised on July 16, 1996 by a broker employed by respondent that they would have to repurchase the 8,000 shares of Iomega or the Iomega calls. Claimants further alleged that, having no choice, the calls were purchased for a total sum of \$37,328.00. Claimants asserted that the broker, in making such demands, wrongly concluded that their account was over margined. Claimants also alleged that, on July 16, 1996, when they were advised to make this purchase choice, the equity value in their account was in excess of the amount needed to purchase the calls.

Claimants asserted that respondent, its agents, servants, brokers, representatives and employees were negligent and careless in that they advised claimants that they could execute the transaction they wanted without having to buy back the Iomega stock or the Iomega calls but later, on July 16, 1996, advised them that they had to repurchase the stock or the calls. Claimants also asserted that respondent, its agents, brokers, servants, representatives and employees were further negligent and careless because the broker who accepted the order to sell the 8,000 shares of Iomega failed to advise claimants that this would cause a margin problem in the account. Claimants alleged that respondent, its agents, servants, representatives, brokers and employees were negligent and careless because they failed to accurately compute the margin requirements for the account on July 16, 1996.

Respondent alleged that claimants failed to take responsibility for their own actions. Respondent maintained that claimants knew that they were not permitted to maintain naked options positions in their account. Respondent further maintained that, at the time of the trades in question, respondent did not permit naked or uncovered call options because it is considered a risky option strategy which exposes the writer to unlimited risk. Respondents alleged that claimants received a booklet from respondent advising them that they had been approved for covered writing and buying. Respondents maintained that claimants placed the transactions in issue without advice or representation made by any employee of respondent and that the trades were self-directed. Respondent further alleged that claimants knew that respondent is a deep discount brokerage firm that operates on an agency basis only and does not solicit orders or provide investment advice. Respondent also maintained that claimants incorrectly calculated their loss.

RELIEF REQUESTED

Claimants requested damages of \$37,238.00 with interest from July 16, 1996, plus the sum of \$3,000 for the overcharge on the purchase of the calls and the sum of \$875.00 for the loss sustained on the sale of the 8,000 Iomega shares of stock for a total loss of \$41,113.00; reasonable attorney's fees and the costs associated with the arbitration.

Respondent requested the dismissal of the Statement of Claim in its entirety and all costs associated with the defense in this arbitration.

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, Inc.

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. Claimants' requests for relief are denied.
2. Each party is to bear their own costs, including attorneys' fees.
3. All other claims for relief are denied.

FORUM FEES

Pursuant to Rule of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the non-refundable \$120.00 filing fee and have assessed the following Forum Fees:

Four sessions	x	\$400.00	\$1600.00
minus claimants' hearing session deposit -			\$ <u>400.00</u>
TOTAL OUTSTANDING			\$1200.00

Claimants be and hereby are liable for the sum of \$800.00 representing 50% of the forum fees assessed. Claimants have previously deposited \$400.00 with NASD Regulation, Inc. and therefore owe an additional \$400.00.

Respondent be and hereby is liable for the sum of \$800.00 representing 50% if the forum fees assessed. Respondent owes \$800.00 to NASD Regulation, Inc.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Charles L. Henderson, Esq.

I, Charles L. Henderson, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who have executed this instrument which is my award.

Charles L. Henderson, Esq.

Date of decision: _____

Concurring Arbitrators' Signatures

Micalyn S. Harris, Esq.

I, Micalyn S. Harris, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who have executed this instrument which is my award.

Micalyn S. Harris, Esq.

Date of decision: _____

Concurring Arbitrators' Signatures

Madelon M. Rosenfeld, Esq.

I, Madelon M. Rosenfeld, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who have executed this instrument which is my award.

Madelon M. Rosenfeld, Esq.

Date of decision: _____