

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Richard Emery, Mark Benda and Russell Benda,

Claimants.

v.

Case Number 96-04034

Cohig & Associates, Incorporated,

Respondent.

REPRESENTATION OF PARTIES

Richard Emery, Mark Benda and Russell Benda ("Claimants") were represented by John D. Hudson, Esquire of The Rosenberg Law Firm in Des Moines, Iowa.

Cohig & Associates, Inc. ("Respondent") was represented by Russell K. Bean, Esquire of Cohig & Associates, Inc. in Englewood, Colorado.

CASE INFORMATION

Claimants Richard Emery, Mark Benda and Russell Benda's Statement of Claim was filed on or about September 10, 1996.

The Submission Agreements of Claimants Richard Emery, Mark Benda and Russell Benda were signed on September 25, 1996.

Cohig & Associates, Inc.'s Statement of Answer was filed on or about November 12, 1996.

The Submission Agreement of Respondent Cohig & Associates, Inc. was signed on November 12, 1996 by Russell K. Bean, General Counsel.

HEARING INFORMATION

The hearing was held on May 6, 1997 for two (2) sessions and on May 7, 1997 for two (2) sessions.

The hearing was held in Omaha, Nebraska.

CASE SUMMARY

In the Statement of Claim, Richard Emery, Mark Benda and Russell Benda ("Claimants") sought to recover monies from Cohig & Associates, Inc. ("Respondent") for alleged breaches of contract, unauthorized trades, breach of fiduciary duty and negligence.

As alleged, all Claimants were interested in a stock called Solv-Ex - a New Mexico based company involved primarily in the extraction of oil and minerals, all had purchased Solv-Ex when they had accounts at Kirkpatrick Pettis and all transferred their accounts to the Respondent in March of 1996 for the sole reason that Kirkpatrick Pettis would no longer permit the margining of Solv-Ex stock and feared that its clients were over-concentrated in the stock. The following positions were transferred to the Respondent:

Richard Emery:	7,240	Solv-Ex	(margin)
	26,200	Alanco	(cash)
Russell Benda:	19,000	Solv-Ex	(margin)
	8,700	Alanco	(cash)
	2,000	Multi-corp	(margin)
Mark Benda	15,000	Solv-Ex	(margin)
	13,000	Alanco	(cash)
	2,000	Multi-corp	(margin)

Claimants contended that Respondent was a market maker for Solv-Ex and that the Claimants' broker, J.D. Mayotte, had a substantial personal position in the stock.

On March 22, 1996, trading of Solv-Ex was halted by the company following the announcement of a grand jury investigation into the trading of the stock by the FBI. According to Claimants, they were not contacted by the Respondent on March 22, 1996 when trading was halted at which time Solv-Ex stock was trading at \$21.75. Richard Emery claimed that although he instructed Respondent to sell Solv-Ex on March 23, 1996 in the morning when the price was \$16.50, Respondent did not sell the stock until late in the day when the price was \$7 1/8. Richard Emery further claimed that without his knowledge Respondent liquidated 14,000 of Alanco in order to cover a debit balance. Mark Benda stated that he told J.D. Mayotte on March 25, 1996 to sell 13,000 shares of Alanco and 2000 shares of Multi-Corp to cover the price decline of Solv-Ex yet on March 26, 1996, Mark Benda discovered that 7,000 shares of Solv-Ex had been sold at approximately \$7 per share. Russell Benda asserted that although he placed a limit order to sell 15,000 shares of Solv-Ex at \$13 with J.D. Mayotte and despite a liquid market at prices agreed upon, the shares were not sold. 3000 shares Solv-ex were later sold in Russell Benda's account at \$11 a share to cover a maintenance call allegedly without authorization.

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Claimants contended that Respondent failed to execute the trades directed by Claimants to the detriment of Claimants and that liquidation of their accounts without notice and without a reasonable opportunity to respond was in violation of the customs and rules of the Exchange. Furthermore, Claimants alleged that since the trades were unauthorized, Respondent's actions were in violation of the federal securities and the Iowa Securities Acts, specifically Section 10-B of the Securities Exchange Act of 1934 and Rule 10B-5 and Iowa Code Section 502.403.

In its Answer, Cohig & Associates, Inc. denied the allegations of wrongdoing asserted by Claimants. Respondent specifically stated that Russell Benda did instruct J.D. Mayotte to sell at the market price and the sale was executed at approximately the price he wanted. However, Richard Emery allegedly told J.D. Mayotte that he would not sell Solv-Ex unless he could do so at \$16 while Mark Benda refused to do anything, insisting the price would rise. Cohig & Associates, Inc. alleged that its margin agreements, which each Claimant executed, provided that Cohig & Associates, Inc. was authorized to sell a customer's securities in its control whenever it deemed appropriate for its protection or for any other reason. Respondent contended that it elected to sell the Claimants' margin positions for its protection in accordance with the margin agreements. Respondents also contended that J.D. Mayotte followed each of the Claimants' instructions after advising them of the risks of their decisions. Respondent asserted that the Claimants' losses were the result of market forces beyond the control of Cohig & Associates, Inc., that Claimants were at least 51% negligent in this matter and that Claimants were responsible for their losses.

RELIEF REQUESTED

Claimants Richard Emery, Mark Benda and Russell Benda requested an award in the amounts of \$67,891, \$77,000 and \$21,000, respectively, for actual damages. The Claimants also requested an award for interest, costs and attorneys' fees.

Respondent Cohig & Associates, Inc. requested that the claims asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees along with \$73.28 for the debit balance in Russell Benda's account.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD Regulation, Inc. 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. That Respondent Cohig & Associates, Inc. is liable for and shall pay to Claimant Richard Emery \$56,250 in actual damages;
2. That Respondent Cohig & Associates, Inc. is liable for and shall pay to Claimant Russell Benda \$26,900 in actual damages;
3. That Respondent Cohig & Associates shall pay Claimant Mark Benda nothing in actual damages;
4. That Respondent Cohig & Associates, Inc. is liable for and shall pay to Claimants Richard Emery, Mark Benda and Russell Benda \$5,000 in attorneys' fees. In determining to award attorneys' fees, the arbitrators considered the Iowa Code Section 502.403 which was the legal authority supplied by Claimants;
5. Other than forum fees which are specifically addressed below, any relief not specifically granted herein is hereby denied in its entirety and dismissed with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) sessions x \$750 = \$3,000 in forum fees. Pursuant to § 10332(b), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to § 10332(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation, Inc.") Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

Claimants Richard Emery, Mary Benda and Russell Benda are, jointly and severally, liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution \$750 in additional forum fees.

Respondent Cohig & Associates, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution \$1,500 for forum fees.

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In accordance with § 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$350 member surcharge previously submitted by the Respondent.

The NASD Regulation, Inc. Office of Dispute Resolution shall also retain postponement fees in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Respondent.

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

Concurring Arbitrators' Signatures:

Richard N. Berkshire, Esquire
Richard N. Berkshire, Esquire
Public Arbitrator, Presiding Chair

June 6, 1997
Dated:

Joseph Kirshenbaum
Joseph Kirshenbaum
Public Arbitrator

June 6, 1997
Dated:

Roy J. Burr, Jr.
Roy J. Burr, Jr.
Industry Arbitrator

June 6, 1997
Dated:

For NASD Regulation use only:
Date served: June 9, 1997