

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Kazem Mahdavi

96-04035

Name of Respondent(s)

Mea Melberg
Marine Midland Securities Inc.

REPRESENTATION

For Claimant, Kazem Mahdavi, appeared Anthony J. Hom, Esq., located in Philadelphia, Pennsylvania.

For Respondents, Marine Midland Securities, Inc. ("Marine Midland Securities") and Mea Melberg ("Melberg") (collectively the "Respondents"), appeared Scott D. Miller, Esq., in-house counsel located in Buffalo, New York.

CASE INFORMATION

Statement of Claim filed: September 27, 1996.

Claimant's Submission Agreement signed on: August 13, 1996.

Joint Statement of Answer filed by Respondents on: October 24, 1996.

Respondent Marine Midland Securities' Submission Agreement was signed on: November 6, 1996.

Respondent Melberg's Submission Agreement was signed on: December 4, 1996.

HEARING INFORMATION

Hearing Date(s)/Sessions: April 21, 1997 Two Sessions

The hearings were held at the Raddison Hotel, 601 Main Street, located in Buffalo, New York.

CASE SUMMARY

Claimant alleged that as a result of the fraudulent and unlawful conduct of respondents in connection with his account maintained at Marine Midland Securities, he suffered significant damages. Claimant also alleged that at the time he opened the account, his stated investment objective was safety of principal, income and long term growth.

Claimant alleged that the total value of all assets deposited into the account was \$91,000.00, and the losses were \$42,594.00. On or about July 24, 1996, respondent Melberg advised Claimant to sell all his securities. Claimant also alleged that Respondent Melberg omitted to disclose the risk of loss involved with the sale of the securities. Claimant further alleged that he first learned of a problem with the account after July 24, 1996 when the securities were sold and contacted Respondent Melberg who advised him nothing could be done.

Claimant asserted that the fraudulent, unlawful and improper conduct of the Respondents included unsuitable trades, fraudulent misrepresentation and omissions, unauthorized trading, breach of contract, breach of fiduciary duty, violations of federal and state securities laws, and violations of the rules and regulations of the NASD and various securities exchanges of which Marine Midland is a member.

Respondents maintained that the crux and gist of Claimant's claims was that Melberg and MMSI failed to advise him that he could suffer a loss regarding the sale of his portfolio. Claimant claimed that this was improper. Respondents disagreed.

Respondents maintained that Mahdavi was not a novice to the stock market. Respondents also maintained that according to account statements produced by Claimant, prior to July 24, 1996, Claimant had personally made 88 trades, either purchases or sales in his MMSI discount brokerage account. He was well known to MMSI's discount brokerage trading desk, often calling merely to check the market to see what a particular security's value was.

Further, Respondents maintained that many of those trades resulted in a loss to Mahdavi; that of the securities which he held and traded prior to July 24, 1996, Claimant incurred losses in half of those transactions; and that Claimant was aware that the sale of stock could result in a loss, and that he could lose his investment.

Respondents further maintained that the stock sold on July 24, 1996 resulted in about a 1 to 4 loss ratio; that Claimant's losses (as well as his gains) for that day's trades were solely due to his own acts; and that as collateral for a loan, Claimant told the Marine branch officer that he wished to pledge stock he held. Mahdavi was referred to Melberg.

Respondent Melberg allegedly asked Mahdavi why he needed a loan. Claimant allegedly told Melberg he had been purchasing stock with lines of credit on various credit cards; that his wife was very angry, and that he had been paying off cards with other cards, as well as making card payments with various unsecured credit lines.

Respondent Melberg allegedly made several appropriate suggestions as solutions to his dilemma. Those suggestions ranged from applying for the loan, selling some of his stock holdings, or doing nothing at all and waiting for the market to improve. Respondent asserted that it was Mahdavi's decision since the account was a discount brokerage account. Mahdavi allegedly decided he wanted to sell everything and his order was executed in his presence without any objection.

RELIEF REQUESTED

Claimant requested \$42,594.00 compensatory damages plus interest from the date the losses were incurred to the date of this arbitration hearing plus attorneys' fees, costs and any other damages that the panel may deem just and fair.

Respondents requested that Claimant's claims be dismissed, that Claimant not be awarded anything, and that the panel find that Respondents acted properly in all respects, together with any relief that the panel may find just and proper.

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. Claimant's claims are dismissed in their entirety.
2. Claimant's claims for interest is hereby denied.
3. All other relief is hereby denied.
4. Each party shall bear its own cost including attorneys' fees.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$120.00 non-refundable filing fee previously deposited by Claimant and have assessed the following Forum Fees:

$$2 \text{ Hearing Sessions} \times \$400.00 = \$800.00$$

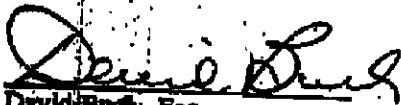
Claimant is hereby liable, and shall pay NASD Regulation, Inc. the sum of \$400.00 which represents one-half of the forum fees assessed in this matter. However, Claimant previously deposited \$400.00 with NASD Regulation. Therefore, Claimant owes nothing by way of forum fees.

Respondents are hereby liable, jointly and severally, and shall pay NASD Regulation, Inc. the sum of \$400.00.

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURE

I, David Bach, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.



David Bach, Esq.
Public Chairperson

I, George Massik, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.

George Massik
Public panelist

I, Robert Shiffrin, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.

Robert Shiffrin, Esq.
Industry panelist

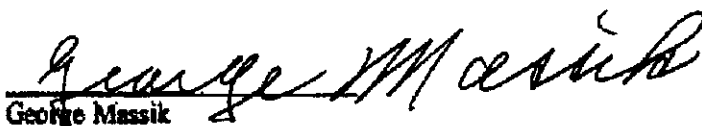
Date of Decision: July 29, 1997

ARBITRATORS' SIGNATURE

I, **David Buch, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.

David Buch, Esq.
Public Chairperson

I, **George Massik**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.


George Massik
Public panelist

I, **Robert Shiffra, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.

Robert Shiffra, Esq.
Industry panelist

Date of Decision: July 29, 1997

ARBITRATORS' SIGNATURE

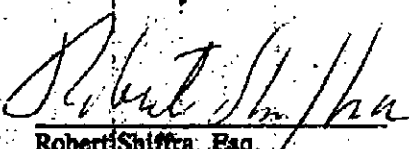
I, David Buch, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.

David Buch, Esq.
Public Chairperson

I, George Masalk, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.

George Masalk
Public panelist

I, Robert Shiffra, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above referenced matter.



Robert Shiffra, Esq.
Industry panelist

Date of Decision: July 29, 1997