

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants/Counter-Respondents

Erwin Cohn and Bernice L. Cohn

96-04321

Name of Respondents/Counter-Claimants/Third-Party Claimants

Shamus Group, Inc.; Shamus Capital Group, Inc.;
Shamus Venture Capital, L.P.; Bishop Allen Inc.;
Linda Anderson; Gregory Polowitz; Robert Furman;
James P. Sheehan

Name of Third-Respondent/Counter-Claimant

Xenophen "John" Pateras

REPRESENTATION

For Claimants: Erwin Cohn and Bernice L. Cohn were represented by Erwin Cohn, Esq. of Chicago, Illinois.

For Respondents: Shamus Group, Inc. ("Shamus Group"); Shamus Capital Group, Inc. ("Shamus Capital"); Shamus Venture Capital, L.P. ("Shamus Venture"); and Bishop Allen Inc. ("Bishop Allen") and James P. Sheehan ("Sheehan") were represented by Mitchell C. Elman, Esq. of Elman & Weiss, P.C., located in New York, New York, but at hearing were represented by James P. Sheehan. Linda Anderson ("Anderson") and Robert Furman ("Furman") were represented by Peter Newton, Esq. of Neal, Gerber & Eisenberg, located in Chicago, Illinois. Gregory Polowitz ("Polowitz") was represented by Eden L. Rohrer, Esq. of Gersten, Savage, Kaplowitz, Fredericks, LLP located in New York, New York. Third-Party Respondent Xenophen "John" Pateras ("Pateras") was dismissed from this arbitration by court order.

CASE INFORMATION

Statement of Claim filed: September 27, 1996.
Claimant's Submission Agreement signed on: May 1, 1996.

Statement of Answer, Third-Party Claim and Counterclaim filed by Respondents Shamus Group; Shamus Capital; Shamus Venture; Bishop Allen; Anderson; Polowitz; Furman and Sheehan on: January 7, 1997.

Respondent Shamus Group's Submission Agreement signed on: January 23, 1997.

Respondent Shamus Capital's Submission Agreement signed on: January 23, 1997.

Respondent Shamus Venture's Submission Agreement signed on: January 23, 1997.

Respondent Bishop Allen's Submission Agreement signed on: January 27, 1997.

Respondent Anderson's Submission Agreement signed on: January 27, 1997.

Respondent Polowitz's Submission Agreement signed on: January 23, 1997.

Respondent Furman's Submission Agreement signed on: January 23, 1997.
Respondent Sheehan's Submission Agreement signed on: January 23, 1997.

Answer to Third-Party Claim filed by Respondent Pateras on: February 6, 1997.
Respondent Pateras's Submission Agreement signed on: February 6, 1997.

Motion to Dismiss filed by Respondents Anderson, Polowitz and Furman on: December 18, 1996
Response to Motion to Dismiss filed by Claimants on: January 13, 1997

Motion to Strike Counterclaim filed by Claimants on: January 13, 1997.
Respondent's Response to the Motion to Strike the Counterclaim filed on: July 8, 1997.

Motion to Amend Statement of Claim filed: April 24, 1997.
Response to the Motion to Amend filed by Respondents Shamus Group; Shamus Capital; Shamus Venture; Bishop Allen; Anderson; Polowitz; Furman and Sheehan on: April 29, 1997.
Supplemental Response to the Motion to Amend filed by Respondents Shamus Group; Shamus Capital; Shamus Venture; Bishop Allen; Anderson; Polowitz; Furman and Sheehan on: July 8, 1997.
Reply to Response filed by Claimants on: July 16, 1997.
Amended Statement of Claim filed on: April 24, 1997.

Motion to Dismiss filed by Third-Party Respondent Pateras on: July 18, 1997.
Response to Pateras' Motion to Dismiss filed on: July 24, 1997.
Reply to the Response to the Motion to Dismiss filed on: July 30, 1997.
Motion to File an Amended Answer filed by Third-Party Respondent Pateras on: July 18, 1997.
First Amended Answer filed by Third-Party Respondent Pateras on: July 18, 1997.
Motion to Decline Jurisdiction, Motion to File Counterclaim and Counterclaim filed by Pateras on: August 15, 1997.

Second Motion to Dismiss filed by Respondent Anderson on: September 22, 1997.
Response to Second Motion to Dismiss filed by Cohn on: October 10, 1997.
Anderson's Reply to Response to Second Motion to Dismiss filed: October 16, 1997
Cohn's Rebuttal to Reply to Response to the Second Motion to Dismiss filed: October 31, 1997.

HEARING INFORMATION

Pre-Hearing Conference: April 28, 1997 before one arbitrator;
July 3, 1997 before one arbitrator
July 29, 1998 before a full panel.

Hearing Dates/Sessions: November 16, 1998 for two sessions;
November 17, 1998 for two sessions; and
November 18, 1998 for two sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Respondents misrepresented certain facts regarding the purchase of a partnership interest in Shamus Venture and then withdrew the funds from the account without authorization; sold securities which were not registered in the State of Illinois; misrepresented and induced the purchase of unsuitable securities, including stocks and warrants, for Claimants' account; churned Claimants' account by engaging in a series of unauthorized purchases of warrants and stocks; charged excessive commissions; failed to properly execute orders; and, failed to transfer all assets in the account to another firm pursuant to proper authorization. In addition, Claimants alleged that Sheehan and other executives failed to properly supervise Pateras.

Respondents Shamus Group; Shamus Capital; Shamus Venture; Bishop Allen; Anderson; Polowitz; Furman and Sheehan denied the material allegations of the Statement of Claim, asserting that any losses suffered by Claimants were the result of Pateras. In addition, these Respondents asserted that Claimants were experienced investors who authorized every transaction; they never complained in writing of the transactions until the filing of this arbitration; and, the Claimants are "cherry-picking" the losing trades from all the activity in the accounts in an attempt to make their broker an insurer of market risk. These Respondents also asserted several affirmative defenses.

Respondents Shamus Group; Shamus Capital; Shamus Venture; Bishop Allen; Anderson; Polowitz; Furman and Sheehan asserted a Third-Party Claim against Third-Party Respondent Pateras, alleging that if they are found liable, then Pateras must indemnify them because such conduct was inconsistent with internal Shamus Group guidelines and constituted a breach of his employment agreement. Respondents Sheehan, Anderson, Polowitz and Furman asserted counterclaims against the Claimants, alleging that including them in the claim was malicious and solely done for harassment. Therefore, these four Respondents asserted that their business reputations were damaged.

Third-Party Respondent Pateras denied the allegations of the claims against him, asserting that all transactions conducted by him were authorized; Cohn's account was transferred from Shamus Group to A.S. Goldmen where he worked; the Shamus Venture purchase was actually closed by Sheehan; and Cohn was only offered a discounted commission rate on trades he called in unsolicited. In addition, Pateras asserted several affirmative defenses. Pateras asserted a counterclaim against the Respondents, alleging that he was owed \$36,000 in unpaid commissions and salary. In addition, he alleged that he quit Shamus Group because of their improper business practices and Respondents have now damaged his business reputation by including him in this action.

RELIEF REQUESTED

Claimants requested entry of an award for return of \$100,000.00 plus interest; return of all moneys lost on the purchase or sale of the stocks and warrants; return of all overcharges on commissions; return of shares sold without authorization; damages pursuant to 815 ILCS 5/13A (1) and (2) for the purchase of the unregistered stock; return of all moneys charged as a markup or markdown; and punitive damages in the amount of \$100,000.00.

Respondents Shamus Group; Shamus Capital; Shamus Venture; Bishop Allen; Anderson; Polowitz; Furman and Sheehan requested entry of an award denying all claims; assessing the costs of the proceedings against Claimants; assessing any amounts they were found liable for on the claim against Pateras; awarding damages on the counterclaim in the sum of \$250,000.00 against Claimants; and for such other relief as the Arbitrators deemed just.

Third-Party Respondent Pateras requested that the claims against him be denied. In addition, Pateras requested an award for \$36,000 in salary and commissions owed plus interest in the sum of \$10,000; \$40,000 for the damage to his reputation; and \$23,000 in punitive damages for maliciously withholding his commissions.

OTHER ISSUES CONSIDERED & DECIDED

On August 4, 1997, the panel made the following determinations:

1. The Motion to Dismiss filed by Respondents Polowitz, Furman and Anderson was denied;
2. The Claimant's Motion to Strike the Counterclaim was denied; and
3. The Claimant's Motion to Amend the Statement of Claim was granted.

On September 4, 1997, the panel denied Third-Party Respondent Pateras' Motion to Dismiss, but granted the Motion to Amend the Answer.

On September 15, 1997, the panel denied Third-Party Respondent Pateras' Motion to Decline Jurisdiction, but granted the Motion to File a Counterclaim.

On November 17, 1997, the panel denied Respondent Anderson's Second Motion to Dismiss.

On November 18, 1997, The United States District Court, Northern District of Illinois, in Case #97cv6061 ordered the dismissal of Third-Party Respondent Pateras from this arbitration. Pursuant to the order, no determination was made regarding Third-Party Pateras.

On November 26, 1997, Respondents Shamus Group; Shamus Capital; Shamus Venture; Bishop Allen; Anderson; Polowitz; Furman; and Sheehan obtained a stay of arbitration in the Supreme Court of the State of New York.

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. The claims filed by Claimants/Counter-Respondents Erwin Cohn and Bernice L. Cohn are dismissed with prejudice and denied in the entirety;
2. The counterclaims filed by Respondents/Counter-Claimants Shamus Group, Inc.; Shamus Capital Group, Inc.; Shamus Venture Capital, L.P.; Bishop Allen Inc.; Linda Anderson; Gregory Polowitz; Robert Furman; James P. Sheehan are dismissed with prejudice and denied in the entirety;
3. The undersigned arbitrators hereby order that all information regarding this arbitration case be expunged from the records of Linda Anderson (CRD# 713783), Gregory Polowitz (CRD# 2069820) and Robert Furman (CRD# 215961) in the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc.;
4. All costs of arbitration, including attorneys' fees, shall be borne by the party incurring the cost; and
5. Any relief not specifically awarded is hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent Shamus Group Inc. has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent Bishop Allen Inc. shall pay to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent Shamus Capital Group Inc. shall pay to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

NASD Regulation, Inc. shall retain the \$500.00 adjournment fee paid by Respondents/Counter-claimants Linda Anderson and Robert Furman.

FORUM FEES

Pursuant to Rule 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two pre-hearings before One arbitrator x \$300.00 = \$600.00; One pre-hearing before a full panel x \$500.00 = \$500.00; Six hearing sessions x \$500.00 per session = \$3,000.00; Total forum fees = \$4,100.00.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$150.00 claim filing fee and, as forum fees, \$800.00 deposit paid by the Claimants/Counter-Respondents Erwin Cohn and Bernice L. Cohn. In addition, Claimants/Counter-Respondents Erwin Cohn and Bernice L. Cohn are liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,250.00 as additional forum fees.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$500.00 claim filing fee

and, as forum fees, the \$500.00 deposit paid by Respondents/Counter-Claimants Shamus Group, Inc.; Shamus Capital Group, Inc.; Shamus Venture Capital, L.P.; Bishop Allen Inc.; Linda Anderson; Gregory Polowitz; Robert Furman; James P. Sheehan. In addition, Respondent/Counter-Claimant James P. Sheehan is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,550.00 as forum fees.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

Concurring Arbitrators' Signatures
Name

Date

/s/ Steven James Nagy, Esq.
Steven James Nagy, Esq.
Public Arbitrator
Chairperson

February 15, 1999

/s/ Stephen E. Smith, Esq.
Stephen E. Smith, Esq.
Public Arbitrator

February 23, 1999

/s/ Susan C. Richards, CFP
Susan C. Richards, CFP
Industry Arbitrator

February 17, 1999

For ODR Use Only-Date of Decision: February 25, 1999

NASD Regulation, Inc., Office of Dispute Resolution
 Arbitration No. 96-01321
 Award Page 6 of 6


and, as forum fees, the \$500.00 deposit paid by Respondents/Counter-Claimants Shamus Group, Inc.; Shamus Capital Group, Inc.; Shamus Venture Capital, L.P.; Bishop Allen Inc.; Linda Anderson; Gregory Polowitz; Robert Furman; James P. Sheehan. In addition, Respondent/Counter-Claimant James P. Sheehan is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,550.00 as forum fees.

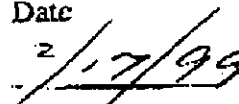
Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

Concurring Arbitrators' Signatures

Name

Date


 Steven James Nagy, Esq.
 Public Arbitrator
 Chairperson


 2/17/99

 Stephen E. Smith, Esq.
 Public Arbitrator

 Susan C. Richards, CFP
 Industry Arbitrator

For ODR Use Only-Date of Decision: _____

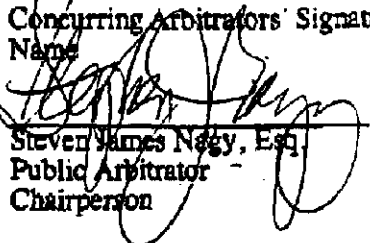
NASD Regulation, Inc., Office of Dispute Resolution
Arbitration No. 96-04321
Award Page 6 of 6

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Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

Concurring Arbitrators' Signatures
Name

Date


Steven James Nagy, Esq.
Public Arbitrator
Chairperson

2/15/99

Stephen E. Smith, Esq.
Public Arbitrator

Susan C. Richards, CFP
Industry Arbitrator

For ODR Use Only-Date of Decision: _____

NASD Regulation, Inc., Office of Dispute Resolution
Arbitration No. 96-04321
Award Page 6 of 6

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Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

Concurring Arbitrators' Signatures
Name

Date

Steven James Nagy, Esq.
Public Arbitrator
Chairperson



Stephen E. Smith, Esq.
Public Arbitrator

2-23-99

Susan C. Richards, CFP
Industry Arbitrator

For ODR Use Only-Date of Decision: _____