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**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

**In the Matter of the Arbitration Between**

**Name of Claimant**

Alice P. Whaley

96-04481

**Name of Respondents**

Cohig & Associates, Inc.  
Doyle Scott Elliott

**REPRESENTATION**

For Claimant: Elihu H. Berman, Esq. of the law firm of Berman & Hobgood, P.A., Clearwater, Florida.

For Respondent Cohig & Associates, Inc. ("Cohig"): Russell K. Bean, Esq., General Counsel, Cohig & Associates, Inc.

The Respondent Doyle Scott Elliott ("Elliott") appeared pro se. The Respondent Doyle Scott Elliott

**CASE INFORMATION**

Statement of Claim filed: October 8, 1996.

Statement of Claim filed:

Claimant's Submission Agreement signed on: October 1, 1996.

Statement of Answer filed by Respondent Cohig on: February 26, 1997.

Respondent Cohig's Submission Agreement signed on: December 26, 1996.

Statement of Answer filed by Respondent Elliott on: December 26, 1996.

Respondent Elliott did not file an executed Submission Agreement.

**HEARING INFORMATION**

One telephonic pre-hearing conference was conducted with the arbitration panel on May 12, 1997 and two hearing sessions were conducted in this matter on September 30, 1997 in Tampa, Florida.

**CASE SUMMARY**

Claimant alleged that she is the widow of Frederick O. Whaley, who died on October 8, 1995 at age 77. Claimant alleged that in March, 1993, Frederick opened a margin account with Hanifen, Imhoff, Inc. which was a joint account, standing in the names of Frederick O. and Alice P. Whaley, and Frederick's

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account executive was Respondent Elliott. Claimant next alleged that on May 18, 1994, the Whaleys entered into a Margin Account Agreement with Cohig which had taken over the Hanifen, Imhoff, Inc. account and Elliott continued to be the Whaleys' account executive. Claimant further asserted that Elliott was the manager of the Tampa office of Cohig and Frederick's dealings with Elliott continued uninterrupted by the change from Hanifen, Imhoff, Inc. to Cohig.

Claimant alleged that from March, 1993 through August 1995, Elliott executed some 39 to 40 orders on Frederick's instruction. Claimant asserted claims for the following: the return of \$10,000.00 that Frederick loaned Elliott on October 25, 1993 and no part of said loan has been repaid; the return of \$60,000.00 that Frederick paid over to Elliott during the period November 4, 1994 through April 4, 1995 to be invested in Treasury bills and no part of said sum has been returned, nor were any Treasury bills turned over to Mr. Whaley; and, for the loss of \$16,660.00 on the unauthorized purchase and sale of shares of stock of Dynamic American, executed by Elliott after Mr. Whaley had lapsed into a coma following surgery on September 5, 1995. Claimant alleged that Elliott had full knowledge of the fact that Mr. Whaley was comatose and dying and Mr. Whaley never did recover consciousness and died on October 8, 1995.

Respondents Cohig and Elliott denied the allegations contained in the Statement of Claim and maintained that Mr. Whaley authorized each and every transaction in the account and each month he received an account statement detailing the transactions and also received confirmations of the transactions. Respondents Cohig and Elliott next maintained that with regard to the transaction concerning shares of stock of Dynamic American, Mr. Whaley provided instructions to Respondent Elliott which he carried out appropriately at a time when Respondent Elliott did not know that Mr. Whaley was comatose. Further, Respondents Cohig and Elliott maintained that Mr. Elliott was not instructed by any account owner to cancel open orders. Respondents Cohig and Elliott asserted that Claimant's allegation that \$60,000.00 was deposited into the account with an instruction to purchase Treasury bills is specious and as deposits the account statements reflect no such deposit. Further, Respondents Cohig and Elliott asserted that Mr. Whaley never instructed Mr. Elliott to purchase Treasury bills and the account was an aggressive growth portfolio, and was handled as such throughout its existence.

Respondent Cohig asserted that it can neither confirm nor deny that Mr. Elliott borrowed \$40,000.00 from Mr. Whaley, but asserted that such a borrowing would be against Cohig's policies and procedures, and would not have been approved by Cohig.

Respondent Elliott maintained that he did borrow monies from Mr. Whaley and payments were made to Mr. Whaley.

#### **RELIEF REQUESTED**

Claimant requested damages in the sum of \$86,660.00 plus pre-judgment interest, attorneys' fees and punitive damages.

Respondent Cohig requested that the Statement of Claim be denied in its entirety as it relates to Cohig plus attorneys' fees.

Respondent Elliott requested that the Statement of Claim be denied in its entirety as it relates to him.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties present at the hearing 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 present at the

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**At the commencement of the hearing, the Claimant withdrew the request for punitive damages.**

**AWARD**

Respondent Cohig is liable and shall pay to the Claimant the sum of \$19,971.64 plus interest at the Florida statutory rate from the date of decision until the date of payment of the Award.

## FORUM FEES

**The Respondent Cohig is assessed the sum of \$1,125.00.**

**Concurring Arbitrators' Signatures**  
Name \_\_\_\_\_

## Public/Industry

Public

Public

## Industry

**Date of Decision: December 5, 1997**