

7-1-97

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Maxine Martincich

96-04875

Names of Respondents

John Wohlberg  
Sovereign Equity Management Corp.

REPRESENTATION

For Claimant: Richard R. Logsdon, Esq. of Clearwater, Florida and Allan J. Fedor, Esq. of the law firm of Fedor & Fedor of Largo, Florida.

The Respondents were represented by Thomas W. Hands, Director of Compliance, Sovereign Equity Management Corp. ("Sovereign") until his withdrawal on July 17, 1997. Thereafter, the Respondents appeared pro se.

CASE INFORMATION

Statement of Claim filed: November 1, 1996.

Letter from the Claimant's counsel to the NASD dated December 6, 1996.

Claimant's Submission Agreement signed on: August 20, 1996.

Joint Statement of Answer filed by Respondents: March 18, 1997.

The Respondents did not submit executed Submission Agreements.

HEARING INFORMATION

On May 20, 1997 and September 16, 1997 telephonic pre-hearing conferences were conducted with the arbitration panel and on October 7, 1997 a hearing lasting two sessions was conducted in Tampa, Florida.

CASE SUMMARY

Claimant alleged the Respondent John Wohlberg ("Wohlberg") engaged in illegal sales practices and churning with respect to her accounts and Sovereign failed to properly supervise Wohlberg and curtail such practices. Claimant further alleged she is a 65 year old retired receptionist/switchboard operator at Morton Plant Hospital in Clearwater, Florida. Claimant next alleged Wohlberg first became involved in selling securities with Lew Lieberbaum & Co., Inc. ("Lieberbaum") in 1992 and in 1994 Wohlberg moved to Sovereign in Boca. Claimant alleged that when Wohlberg left Lieberbaum for Sovereign he

asked the Claimant for permission to take her accounts with him and she did not object since the investments seemed to be fine. Claimant alleged that until that point, there had been fairly little trading going on in her accounts.

Claimant further asserted that shortly after her accounts were moved from Lieberbaum to Sovereign, the volume of transactions increased tremendously among her three accounts and several trades that Wohlberg made were not authorized. Claimant alleged that securities transferred from Lieberbaum were sold out in short order and replaced with some potentially speculative securities.

Claimant alleged that the investments were unsuitable for her given her age, limited assets, lack of investment experience and her limited income. Claimant alleged that the account was churned by the Respondents, more specifically, in the first four months that one account existed, the total purchases were \$58,409.48 or 4.4 times (annualized out to be a turnover rate of 13.2).

Claimant further alleged that in another account, 15 of the 18 opening trades were stocks in which Sovereign was a principal in the trade and in two more new offerings, Sovereign was a member of the selling group. Claimant next alleged that some of the securities purchased in this account were low quality stocks and the account was heavily margined to make the purchases. Claimant asserted that in eleven months this account made purchases totaling \$118,531.00 on an average equity of \$14,039.02 with a turnover rate of 8 1/2 times and an annualized rate of more than nine times.

Claimant next alleged that by late fall of 1994 she became frightened of all of the activity in the accounts and when she questioned Wohlberg he said, "You're doing fine, trust me" and "I promise you are not losing anything." Claimant alleged that she did not always understand the account statements and Wohlberg would assure her that "Everything has been taken care of." In addition, Claimant asserted that even though Wohlberg did not receive specific authorization to trade the accounts, he would go ahead and execute the trades. Claimant maintained that she questioned the use of a margin account in that she did not understand the basics of that type of trading and Wohlberg was very angry when she tried to force him into an explanation of margin accounts and insisted that the accounts were still making money and that she had nothing to worry about. Claimant alleged that in the spring of 1995 Wohlberg resigned from Sovereign and the Claimant received a handwritten letter from him recommending that she move her accounts to another firm.

Claimant next maintained that during Wohlberg's tenure with Sovereign from May 1994 through March 1995 she placed her complete faith, confidence and trust in him and during that period of time the three accounts in question would have had to generate a return of more than 33% annually just to cover the commissions and margin expenses. Claimant alleged that throughout the time that Wohlberg was employed by Sovereign, he engaged in illegal sales practices including making misrepresentations about securities that he recommended, "churning" the accounts for commissions and making unauthorized and unsuitable investments. Claimant asserted that after he was hired, Sovereign's management team failed to stop Wohlberg's alleged illegal activities.

Claimant further alleged that Respondent Sovereign failed to properly supervise the activities of its agent John Wohlberg and is liable directly for the alleged wrongdoing and for the conduct of John Wohlberg under the common law theory of respondeat superior.

In the Statement of Answer, the Respondents denied the Claimant's factual allegations. Further, the Respondents maintained that Claimant attested to her investment objectives of growth and speculation-high degree of risk by signing and completing the account agreement documentation and she completed a margin agreement in order to allow for a more speculative course of trading in an attempt to achieve higher returns. Respondents further asserted that Wohlberg discussed with, and sought approval from

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Claimant for all transactions in her accounts. Respondent Sovereign asserted that they were diligent in their supervision of Wohlberg and they complied with all state and federal laws, rules and regulations and acted in accordance with the rules of the NASD.

### **RELIEF REQUESTED**

Claimant requested trading-related losses and return of excessive commissions totalling \$42,983.56 plus 6,934.25 interest on the losses themselves, as well as costs, expenses, disbursements and reasonable attorneys' fees to be awarded by a court of competent jurisdiction, and reimbursement of the \$520.00 filing and forum fees paid to NASD Regulation, Inc. Claimant also requested punitive damages, sanctions for discovery abuse and abuse of the arbitration process and such other relief as the panel deemed just and proper.

Respondents requested that the claim be dismissed with prejudice and that Respondents' filing fees be returned to Sovereign.

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

The party 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 party present at the hearing agreed to receive conformed copies of the Award while the original(s) remain on file with NASD Regulation, Inc.

Pursuant to Rule 10101 of the Code of Arbitration Procedure ("Code"), the arbitration panel found subject matter jurisdiction over this entire controversy.

The arbitration panel further found that the Respondents were members of the NASD and/or associated persons with a member firm of the NASD at the time the controversy arose. Consequently, the arbitration panel found personal jurisdiction over the Respondents pursuant to Rule 10301 of the Code.

In view of the above, the arbitration panel found that the Respondents were required to file with NASD Regulation, Inc. Statements of Answer and properly executed Submission Agreements pursuant to Rule 10314(b) of the Code. In this regard, the arbitration panel found that the Statement of Claim was properly served upon the Respondents pursuant to Rule 10314(a) of the Code.

In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the arbitration panel found that NASD Regulation, Inc. provided the Respondents with "due notice" of the hearing conducted in this matter by regular and certified mail. The arbitration panel, therefore, determined to proceed with the hearing without the Respondents present.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Sovereign and Wohlberg are found liable, jointly and severally, and shall pay to Claimant the sum of \$42,983.56 as compensatory damages for violations of F.S. Section 517.301 and under the common law claims asserted, \$6,934.25 in pre-judgment legal interest on the losses in Claimants' accounts, plus post award interest at the legal rate from the date of the Award to the date of payment of the Award.

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2. Respondent Sovereign shall pay to Claimant the additional sum of \$128,949.00 as punitive damages along with post award interest at the legal rate from the date of the Award to the date of payment of the Award. Respondent Wohlberg shall pay to Claimant the additional sum of \$42,983.00 as punitive damages along with post award interest at the legal rate from the date of the Award to the date of payment of the Award. The panel finds that the Respondents engaged in a willful, wanton, malicious and methodical scheme to deceive Claimant, that they engaged in gross misconduct, that the conduct complained of was of such a character as to evidence an entire want of care, raising a presumption of conscious indifference to its consequences. Further, the conduct of Respondents was of a wanton, malicious and reckless nature evidencing a gross and careless disregard for the Claimant as well as a reckless indifference to her rights so as to be equivalent to an intentional violation of her rights. Punitive damages were awarded pursuant to Mastrobuono v. Shearson Lehman Brothers, Inc. 8 Fla. Law Weekly 636.

3. Respondent Sovereign shall pay to Claimant sanctions of \$5,000.00 for discovery abuse and abuse of the arbitration process.

4. Respondents are liable, jointly and severally, and shall pay to the Claimant her costs and expenses in the amount of \$1,215.58.

5. In accordance with F.S. Section 517.211, F.S. Section 682 (Florida Arbitration Code), 9 U.S.C. Section 1 et seq (Federal Arbitration Act) and the cases interpreting these statutes, the entitlement to and amount, if any, of attorneys' fees shall be determined by a court of competent jurisdiction.

6. The Respondents are liable, jointly and severally, and shall pay to the Claimant the sum of \$520.00 representing reimbursement of the claim filing fee and the hearing session deposit previously paid by the Claimant to NASD Regulation, Inc.

**FORUM FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, forum fees in the sum of \$1,600.00 (4 sessions x \$400.00) are assessed as follows:

The Respondents are assessed, jointly and severally, the sum of \$1,600.00 less the \$400.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due in the sum of \$1,200.00

Fees are payable to National Association of Securities Dealers Regulation, Inc.

Concurring Arbitrators' Signatures  
Name

Public/Industry

\_\_\_\_\_/s/  
John M. Mankin, Esq.

Public

\_\_\_\_\_/s/  
Ronald M. Gordon

Public

\_\_\_\_\_/s/  
Willson O. Edwards

Industry

Date of Decision: October 21, 1997