

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Jesse and Elizabeth Moroni

96-04932

Name of Respondents

Michael Tippi,
Blunt, Ellis & Lowe, Inc.,
n/k/a EVEREN Securities, Inc.,
John Uffleman, and
Clearing Services of America

REPRESENTATION

Jesse and Elizabeth Moroni ("Claimants") were represented by Charles C. Hines, Esq., Carbondale, Illinois.

Blunt, Ellis & Lowe, Inc., n/k/a EVEREN Securities, Inc. ("EVEREN"), and John Uffleman ("Uffleman") were represented by Renan Sugarman, Esq., EVEREN Securities, Inc., Chicago, Illinois.

Clearing Services of America ("CSA") was represented by Donald Mehan, Esq., of Moline, Shostak, Strand & Mehan, LLC, St. Louis, Missouri.

Michael Tippi was not represented, and failed to appear at the hearing.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about December 2, 1996. Claimants signed a Submission Agreement on October 31, 1996.

EVEREN's and Uffleman's joint Motion to Dismiss, Statement of Answer and Submission Agreement were filed on or about January 20, 1997.

CSA's Statement of Answer was filed on or about . NASD Regulation, Inc. does not have a record of CSA's Submission Agreement.

Tippi failed to file an Answer and Submission Agreement.

HEARING INFORMATION

A Pre-Hearing Conference with the panel was held on November 9, 1998, for one (1) session.

The hearing was held on November 11, 1998 for two (2) sessions.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimants allege that Respondents: Conducted inappropriate trading activities in their account; made fraudulent use of their funds; fraudulently misused Claimants' money while dealing in nonexistent securities; made unsuitable recommendations and purchases of securities. Claimants stated that Tippy was their broker from 1986 until June, 1994. Claimants stated that they followed Tippy from E.F. Hutton, to Shearson, Lehman Hutton, Blunt, Ellis and Loewi, and CSA. Claimants further stated that Tippy became an independent broker with CSA in August, 1991. In addition to the allegations of misuse and theft of client funds, Claimants claims arose out of securities transactions more fully covered in the Statement of Claim and at the hearing.

EVEREN and Uffleman denied each and every allegation of wrongdoing in the Statement of Claim. EVEREN and Uffleman also asserted the following affirmative defenses: The statement of Claim failed to state a cause of action for which relief could be granted; the statement of Claim is barred by the applicable statutes of limitation, the theory of contributory and/or comparative negligence, the doctrines of estoppel, waiver and ratification, and NASD Eligibility Rules; Claimants failed to mitigate their damages; Claimants suffered no damages for which they can recover from EVEREN or Uffleman; there is no private right of action for alleged violations of self-regulatory organization rules; EVEREN and Uffleman fully satisfied any duties they had to Claimants by expeditiously and properly filing all Claimants' orders and notifying them by written confirmation; the actions of Tippy were outside the scope of his duty and authority; and Tippy was not acting as an agent of EVEREN at the time and to the extent any private funds were entrusted and misused by him.

Unless otherwise admitted in its Answer, CSA denied the allegations contained in the Statement of Claim. CSA asserted that: While Claimants maintained an account with CSA, each transaction made in respect of that account was confirmed to them in writing; at no time did CSA receive information that Claimants had attempted to deposit funds which were not reflected on their accounts or their account statements reflected withdrawal of funds from their accounts which were not properly delivered to them; Tippy was not acting on behalf of CSA or within the scope of his duties as a representative of CSA at such times as the funds or assets were solicited or received by Tippy, that CSA had no knowledge of such transaction, CSA benefited in any way from such transactions, and that CSA in any way ratified, approved or condoned Tippy's actions; the credits to Claimants' accounts reflected funds that were deposited by Claimants but were initially credited erroneously to the accounts of other customers; when the erroneous deposits were recognized, Claimants' account was properly credited with their deposits, together with accrued interest on the funds; none of the funds purportedly deposited by the Bank of Marion appear to have been withdrawn from the Claimants' account with CSA, and none of the funds were payable to CSA; at no time did Claimants notify CSA that they had delivered funds to Tippy which were not properly credited to their CSA account; CSA did not benefit from, know of, condone or ratify any business dealings other than those which were transacted through Claimants' account with CSA and reflected on the account statements issued by CSA for said account; Claimants are estopped from asserting any claim against CSA; Claimants' claims are barred, in whole

or in part, by the applicable statutes of limitation, and in particular by 735 ILCS 5/13-205; and Claimants' claim is barred by the doctrine of laches.

RELIEF REQUESTED

Claimants requested the following for the first part of their claim: The commission Claim in the amount of \$4,655.18; trading losses in the amount of \$39,008.27; losses from inappropriate trading activities in the amount of \$6,773.08; losses from fraudulent use of client funds in the amount of \$69,000; and punitive damages of \$1,000,000. For the second part of their claim, Claimants requested: Losses from the misuse of their money in the amount of \$69,000; and punitive damages in the amount of \$1,000,000.

EVEREN and Uffelman requested that the Statement of Claim be dismissed in its entirety, and for their costs, expenses and attorneys' fees for having to defend this action.

CSA requested that the Statement of Claim be dismissed with prejudice, and at Claimants' costs, that it recover its attorneys' fees incurred herein, and for such other and further relief as to which it may be entitled under the circumstances.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing 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 original(s) remain on file with the NASD.

During the course of the arbitration, EVEREN filed a Motion to Dismiss. After review of the motion and responses, the arbitrators scheduled a telephonic hearing on the motion. The hearing was held on November 9, 1998. After consideration of the parties argument and pleadings, the arbitrators granted the motion as to all trades, inappropriate activity, and fraudulent use of client funds more than six years prior to the claim being filed.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Tippy was properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Tippy received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

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:

Respondent Michael Tippy is liable for, and shall pay to the Claimants the following: Compensatory damages of \$138,000.00; legal interest in Illinois from either the first date of withdrawal of funds from

the account (11/13/90) if allowed under Illinois law, or, in the alternative, from the date of issuance of the Award; and punitive damages in the amount of \$138,000.00.

All other claims/requests for relief not specifically set forth in this Award are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session, \$300 for each pre-hearing conference with a single arbitrator, and \$1,000 for each pre-hearing conference with the entire panel. There was one (1) pre-hearing session @ \$1,000 per session, and two (2) hearing sessions @ \$1,000 per session. Total forum fees for this arbitration are \$3,000. Pursuant to Rule 10332(b) of the Code, 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 Rule 10332(c) of the Code, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$250 and shall refund as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. by the Claimants.

Additional forum fees in the amount of \$1,500 are assessed by the arbitrators against Respondent EVEREN.

Additional forum fees in the amount of \$1,500 are assessed against Respondent CSA.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent EVEREN has paid to NASD Regulation, Inc. the \$500 non-refundable member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent CSA shall pay to NASD Regulation, Inc. the \$500 past due member surcharge previously invoiced.


Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators

Dated

Thomas A. Cipolla
Public Arbitrator

Raymond R. Hirsch
Public Arbitrator


John Fox Arnold
Industry Arbitrator


December 4 1998

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NASD REGULATION

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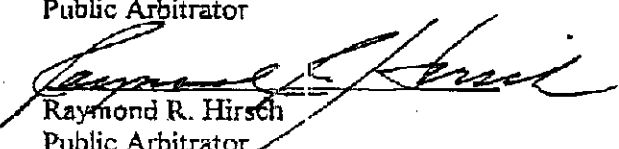
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Public Arbitrator


Raymond R. Hirsch
Public Arbitrator

John Fox Arnold
Industry Arbitrator

Dec. 7, 1998

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Dated



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Public Arbitrator

12/1/98

Raymond R. Hirsch
Public Arbitrator

John Fox Arnold
Industry Arbitrator