

7/10/97

AWARD

NASD Regulation, Incorporated Office of Dispute Resolution

In the Matter of Arbitration Between

Ann Brewster,

Claimant,

and

No. 96-05188

J.W. Charles Securities, Inc., J.W. Charles Clearing Corp.,
The Machaira Group, Inc., and Guy W. Courtney,

Respondents.

REPRESENTATION OF PARTIES

For claimant: Ann Brewster ("Brewster") was represented by Howard B. Prossnirz, Esq. of Law Offices of Howard Prossnirz, located in Chicago, Illinois.

For respondents: The Machaira Group, Incorporated ("Machaira") and Guy W. Courtney ("Courtney") were represented by J. William Holland, Esq. of Holland & Holland, located in Chicago, Illinois. J.W. Charles Securities, Inc. ("J.W. Charles Securities") and J.W. Charles Clearing Corporation ("J.W. Charles Clearing") were represented in pleadings by Charles E. Scarlett, Esq. of J.W. Charles Securities, Inc. located in Boca Raton, Florida, but were not represented at the hearing in this matter pursuant to a settlement agreement.

CASE INFORMATION

Claimant's Statement of Claim was filed on: November 19, 1996.

Claimant's Submission Agreement was signed on: December 7, 1996.

Machaira and Courtney's Statement of Answer was filed on: June 11, 1997.

Courtney's Submission Agreement was signed on: June 10, 1997.

Machaira's Submission Agreement was signed by Guy W. Courtney, President of The Machaira Group, Inc., on: June 10, 1997.

J.W. Charles Securities and J.W. Charles Clearing's Motion to Dismiss and Statement of Answer was filed on: March 14, 1997.

J.W. Charles Securities' Submission Agreement was signed by Charles Scarlett, Esq., General Counsel of J.W. Charles Securities, Inc., on: March 14, 1997.

J.W. Charles Clearing's Submission Agreement was signed by Charles E. Scarlett, General Counsel

of J.W. Charles Clearing Corp., on: March 14, 1997.

HEARING INFORMATION

Pre-hearing conferences: None held.

The hearing was held on: August 6, 1997 for two (2) sessions;
August 7, 1997 for two (2) sessions;
August 8, 1997 for one (1) session; and
September 4, 1997 for two (2) sessions.

The hearing was held in: Chicago, Illinois.

CASE SUMMARY

Claimant Brewster brought this action to rescind transactions and recover sums lost in her accounts with Machaira, which were managed by Courtney, maintained at J.W. Charles Securities, and whose trades were cleared by J.W. Charles Clearing. Brewster, relying on Courtney's representations that he would follow her guidelines and his investment policy, opened three accounts with J.W. Charles in July 1993, none of which granted discretionary authority to any of the respondents. Another account was opened in August 1994 with J.W. Charles Clearing. Brewster alleged that Courtney was aware that preservation of capital was her principal concern and that her investment objectives were income and modest capital appreciation with safety. Brewster further asserted that Courtney began placing trades in her account without prior approval, breached his agreed upon commission rate of 1.2% to 1.5% of equity value, and instructed her to throw away all statements because he would personally reconcile all her trading confirmations and call her attention to any mail that required her attention. Brewster further alleged that Courtney began making speculative positions in her accounts, which accounted for a heavily disproportionate share of her total portfolio, and which was contrary to his promised philosophy of buying and holding quality stocks. Claimant Brewster stated that when she directed Courtney and Machaira to close out particular speculative positions in her accounts, they delayed acting on these instructions and eventually only partially carried them out. Brewster contended that had Courtney properly disclosed his NASD history, instead of affirmatively misrepresenting such, she would have never done business with respondents. As a result of the above allegations, Claimant asserted the following causes of action: (1) breach of contract; (2) unsuitable recommendations; (3) unauthorized trading; (4) excessive commissions; (5) misrepresentations and omissions; (6) breach of fiduciary duty and failure of J.W. Charles to supervise; and (7) violations of Illinois securities laws.

Respondents Courtney and Machaira denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. They stated that Brewster requested a portion of her investment to be allocated to high risk investments, so long as Courtney explained the nature of the

risk to her, which he did. Courtney and Machaira further stated that discretionary authority was granted to outside investment managers. They asserted that Brewster was informed that her accounts were treated to a discount from the standard commission rate, and that she might expect commissions to equal approximately 1.5% to 2% annually, but that commissions could be much greater than 2% and lower than 1.5%. Courtney and Machaira contended that every trade in Claimant's accounts was discussed in advance of trade entry, except trades entered by the independent contractors. According to Courtney and Machaira, Courtney informed Brewster that after she received her confirmations and reconciled them to her monthly statements, she could discard them, but that she should always retain them. In addition, Respondents stated that Courtney informed Claimant that he received copies of her statements and that he reviewed them. Courtney acknowledged that Brewster received a schedule of gains and losses.

Respondents J.W. Charles Securities and J.W. Charles Clearing denied any liability, asserting that no allegations were made against them in the statement of claim; Courtney was not an employee of either firm; and that J.W. Charles Securities was the clearing broker who provided only ministerial functions to Machaira.

RELIEF REQUESTED

Claimant Brewster requested an award for rescission of the investments in her accounts, rescission of the commissions charged, damages equal to the amount of the excess commissions above the agreed upon rate, actual damages of \$220,000, punitive damages of \$100,000, plus the amount she would have earned in a conservative portfolio, interest, the costs of this action, and filing fees.

Respondents Guy W. Courtney and The Machaira Group, Incorporated requested that the Statement of Claim be dismissed and that they be awarded their costs.

Respondents J.W. Charles Securities and J.W. Charles Clearing requested that this matter be dismissed in the entirety and that they be awarded costs and fees for defending this arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

On June 11, 1997, after considering J.W. Charles Securities, Inc. and J.W. Charles Clearing Corporation's motion to dismiss and Claimant's response thereto, the panel of arbitrators denied said motion.

On April 28, 1997, Claimant submitted a motion for default against The Machaira Group, Incorporated and Guy W. Courtney. On June 11, 1997, after considering this motion and all responses thereto, the panel of arbitrators denied the motion.

Pursuant to Claimant's letter dated July 24, 1997, J.W. Charles Securities, Incorporated and J.W.

Charles Clearing Corporation reached an agreement with Claimant and the claims against these Respondents were dismissed.

On August 5, 1997, Claimant renewed a motion to bar Guy W. Courtney from using documents at the hearing in this matter in violation of §§32(b)(1) and 32(c) (currently known as §§10321(b)(1) and 10321(c)) of the NASD Code of Arbitration Procedure. This motion was denied at the hearing.

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 Regulation, Incorporated Office of Dispute Resolution.

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. Respondents The Machaira Group, Incorporated and Guy W. Courtney are jointly and severally liable for and shall pay to Claimant Ann Brewster compensatory damages of \$190,750.00, plus interest thereon at the rate of 8½% per annum from December 7, 1996 until paid in full;
2. The above amount shall be reduced by the sum of settlement Ann Brewster has or will receive under her settlement agreement with Respondents J.W. Charles Securities, Inc. and/or J.W. Charles Clearing Corporation;
3. The claims for punitive damages are hereby dismissed and denied;
4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
5. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed: Seven (7) hearing sessions x \$750.00 = \$5,250.00

Pursuant to §10332(c) of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$200.00 and shall refund the hearing session deposit of \$750.00 and the overpayment of \$850.00 previously deposited with the NASD

Regulation, Incorporated Office of Dispute Resolution by Claimant Ann Brewster.

Respondents Guy W. Courtney and The Machaira Group, Incorporated are jointly and severally liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution forum fees of \$5,250.00

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the postponement fees of \$750.00 paid by Respondents The Machaira Group, Inc. and Guy W. Courtney.

Pursuant to § 10333 of the Code, the NASD Regulation, Incorporated Office of Dispute Resolution. The Machaira Group, Incorporated. is liable for and shall pay to the NASD Regulation, Incorporated Office of Dispute Resolution the non-refundable member surcharge of \$350.00

Pursuant to § 10333 of the Code, J.W. Charles Securities, Inc. is liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution the member surcharge of \$350.00.

Pursuant to Section 10333 of the Code, J.W. Charles Clearing Corp. is liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution the member surcharge of \$350.00.

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

Concurring Arbitrators' Signatures

Dated:

/s/ Jerome M. Katz, Esquire

October 14, 1997

Jerome M. Katz, Esquire
Chairperson
Public Arbitrator

/s/ Harry L. Sheehy

October 9, 1997

Harry L. Sheehy
Public Arbitrator

/s/ Michael T. Gedzun

October 8, 1997

Michael T. Gedzun
Industry Arbitrator

For NASD use only. Date Award was served on the parties: October 21, 1997