

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Margaret A. Christman,

Claimant,

and

No. 96-05482

Daniel J. Weis, and
EVEREN Securities, Inc.,
Respondents.

REPRESENTATION OF PARTIES

Claimant Margaret A. Christman ("Claimant") was represented by Robert M. Disch, Esq. of Ross & Hardies located in Washington, D.C.

Respondents Daniel J. Weis ("Weis") and EVEREN Securities, Inc. ("EVEREN") (collectively referred to as "Respondents") were represented by Michael H. Schaalman, Esq. of Quarles & Brady located in Milwaukee, Wisconsin.

CASE INFORMATION

The Statement of Claim was filed on or about December 9, 1996.

Claimant's Submission Agreement was signed on November 26, 1996.

The Joint Statement of Answer was filed on or about March 12, 1997.

Respondent EVEREN's Submission Agreement was signed on March 12, 1997.

Respondent Weis' Submission Agreement was signed on May 27, 1997.

Claimant's Post-Hearing Brief was filed on or about January 6, 1998.

Respondents' Post-Hearing Brief was filed on or about January 6, 1998.

HEARING INFORMATION

A telephonic pre-hearing conference was held on November 10, 1997 for one (1) session.

The hearing was held on: December 9, 1997 for two (2) sessions and December 10, 1997 for two (2) sessions.

The hearing was held in Milwaukee, Wisconsin.

CASE SUMMARY

Claimant alleged that she had no experience or knowledge of the securities markets. Claimant maintained that she trusted Respondents to only trade in securities suitable to her widowed status, modest means, and investment objectives. Claimant contended that Respondents engaged in excessive trading in risky and speculative securities unsuitable for her account and circumstances. Claimant asserted that contrary to her best interests and to the duties and obligations owed to Claimant, Respondents generated over \$10,000 in commissions and \$29,330 in margin interest and caused at least \$154,967 in losses in her account.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that Claimant not only authorized each and every trade in her account, but received hundreds of account statements, confirmation slips and approved new account information reflecting her investment objectives. Respondents contended that at no time did Claimant complain about her account. Respondents maintained that Claimant withdrew over the relevant time periods approximately \$159,000 from her \$179,000 account. Respondents asserted that Claimant's account actually reflected a total net out-of-pocket gain of approximately \$76,000.

RELIEF REQUESTED

Claimant sought recovery of at least \$196,437 in compensatory damages, comprised of \$29,330.32 margin interest, \$154,967.53 trading losses and \$12,129.15 commissions. Claimant also sought punitive damages, interest and attorney fees.

Respondents requested that the claims asserted against them be dismissed in their entirety and that

they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

- (1) That the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) That other than forum fees which are specified below, the parties shall each bear their own costs, expenses, and attorneys' fees incurred in this matter; and
- (3) That any relief not specifically enumerated is hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 = \$300 in forum fees. There were four (4) hearing sessions x \$750 = \$3,000 in forum fees. Total forum fees = \$3,300. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (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 § 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to § 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent EVEREN.

Pursuant to § 10332(c) of the Code, Claimant is liable for and shall pay forum fees in the amount of \$900 (½ forum fees - hearing session deposit).

Pursuant to § 10332(c) of the Code, Respondents are jointly liable for and shall pay forum fees in the amount of \$1,650 (½ forum fees).

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

Concurring Arbitrators' Signatures

\s\ Herbert S. Bratt, Esq.
Herbert S. Bratt, Esq.
Chairperson
Public Arbitrator

February 2, 1998
Dated:

\s\ Gary L. Grolle, J.D.
Gary L. Grolle, J.D.
Panelist
Public Arbitrator

February 2, 1998
Dated:

\s\ Roy Clyde George
Roy Clyde George
Panelist
Industry Arbitrator

January 30, 1998
Dated:

For NASD use only:
Date Award was served on the parties: February 2, 1998