

NASD AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Jill Mervin

97-00138

Name of Respondents

Principal Financial Securities, Inc.
Hamilton Investments, Inc.
Osborne L. Jones
Michel Schenone
John G. Lavin

REPRESENTATION

Claimant Jill R. Mervin ("Claimant") was represented by William Lenihan, Esq., New York, NY.

Respondents Principal Financial Securities, Inc. ("Principal") and John G. Lavin ("Lavin") were represented by James J. Moylan, Esq., of the law firm of Arnstein & Lehr, Chicago, IL.

Respondents Hamilton Investments, Inc. ("Hamilton") and Michel E. Schenone ("Schenone") were represented by Rosmarie J. Guadnolo, Esq., of the law firm of Horvath & Lieber, PC, Chicago, IL.

Respondent Osborne L. Jones ("Jones") was not represented at the hearing.

CASE INFORMATION

Statement of Claim filed: January 31, 1997.

Claimant's Submission Agreement signed on: January 7, 1997.

Joint Statement of Answer filed by Respondents Principal and Lavin on: July 22, 1997.

Amended Joint Statement of Answer filed by Respondents Principal and Lavin on: August 13, 1997.

Respondent Principal's Submission Agreement signed on: October 3, 1997.

Respondent Lavin's Submission Agreement signed on: October 4, 1997.

Joint Statement of Answer filed by Respondents Hamilton and Schenone on: April 14, 1997.

Amended Joint Statement of Answer filed by Respondents Hamilton and Schenone on: March 27, 1998.

Respondent Hamilton's Submission Agreement signed on: April 17, 1997.

Respondent Schenone's Submission Agreement signed on: April 15, 1997.

Respondent Jones neither filed an answer nor a uniform submission agreement.

HEARING INFORMATION

Pre-Hearing Dates/Sessions:

September 29, 1997 - one session with the Panel

December 15, 1997 - one session with the Panel
April 20, 1998 - one session with the Chairperson only
April 28, 1998 - one session with the Chairperson only

Hearing Dates/Sessions: April 29, 1998 - two sessions
April 30, 1998 - two sessions

Hearing Location: NASD Regulation, Office of Dispute Resolution, New York, NY

CASE SUMMARY

Claimant alleged, that she lost \$129,000 due to the actions of her brokers and their firms. Claimant alleged that the Respondents actions were taken without her granting discretion to trade, were classified as unsuitable trading, resulted in the "churning" of her account, and were wholly opposed to a reasonably prudent investment philosophy. More specifically, Claimant alleged that Jones was her broker throughout the period in question and that he engaged in inappropriate investments for an IRA account and that whenever Claimant inquired as to mounting losses, Jones reassured her that such losses were only temporary. Claimant alleged that from March 1990 until January 28, 1991, Jones was her broker at Tucker Anthony, Inc., and during this period she lost approximately \$39,030 through unsuitable trading. Claimant alleged that from December 1990 until June 1994, she was a customer of Hamilton and the brokers assigned to her account were Jones and Schenone. Claimant alleged that, during that period, there was voluminous trading in her account resulting in a net loss of \$29,473. Claimant alleged that, on or about September 1994, Principal acquired Hamilton. Claimant alleged that, due to unsuitable purchases between 1992 and 1995, there are approximately \$60,497 in unrealized losses in Claimant's portfolio due. Claimant alleged various violations of the securities laws by Jones and alleged that Jones' employers failed to supervise Jones and curtail his activities.

Hamilton and Schenone denied all allegations of wrongdoing on their part asserted in Claimant's claim. Hamilton and Schenone maintained that Claimant failed to provide evidence of the losses alleged. Hamilton denied that the trading in Claimant's account prior to September 1, 1993, was unsuitable or constituted "churning" based on Claimant's objectives, financial knowledge and experience, net worth, and approval of the activity in her account. Hamilton denied that the activity in Claimant's account from approximately September 1, 1993, through February 24, 1995, was unsuitable or constituted "churning." Hamilton maintained that, during that period, there were no purchases, but only reinvestment of dividends. Hamilton maintained that the account was transferred to Principal after approximately February 24, 1995, at which time Principal had acquired the retail operations of Hamilton. Schenone denied that the activity in Claimant's account from approximately September 1, 1993, through March 31, 1995, was unsuitable or constituted "churning." Schenone maintained that, during that period, there were no purchases but only reinvestment of dividends. Schenone maintained that the account was reassigned on or about April 1, 1995, when Schenone left for a new job. In addition, Hamilton and Schenone maintained that all claims against them are barred by applicable statute of limitations.

Principal and Lavin denied all allegations of wrongdoing on their part asserted in Claimant's claim. Principal and Lavin maintained that there were absolutely no purchases or sales of any securities in Claimant's account while it was maintained at Principal with Lavin as her assigned broker. Principal and Lavin maintained that three securities were transferred into Claimant's account when it was opened in February 1995 and that the same three securities were transferred out when the account was closed in March 1996. Principal maintained that Jones was not employed by it during the period that Claimant had an account with Principal. Principal maintained that it was only named as a Respondent because Claimant erroneously believed that it was the corporate successor to Hamilton. Principal maintained that, although

it acquired certain assets of Hamilton in August 20, 1994, it did not acquire, merge with or otherwise succeed to Hamilton or acquire any of its liabilities.

RELIEF REQUESTED

Claimant Mervin requested compensatory damages of \$129,000 from all Respondents jointly and severally. Claimant further requested reimbursement of attorney's fees in the sum of \$15,000.

Respondents Hamilton and Schenone requested dismissal of the Statement of Claim and reimbursement for their fees and costs.

Respondents Principal and Lavin requested dismissal of the Statement of Claim and reimbursement for costs, including attorney's fees.

OTHER ISSUES CONSIDERED & 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 originals remain on file with NASD Regulation, Inc.

NASD Regulation made efforts to serve Jones with notice of this case at several addresses including: 1) 412 W. Walnut Street, Hinsdale, IL 60521; and 2) 513 North Park Street, Apt. 2, Westmont, IL 60559. Pursuant to Rule 10301 of the NASD Code of Arbitration Procedure, the Panel exercised its jurisdiction over Jones. Notwithstanding Jones' failure to file a uniform submission agreement or an answer, Jones is bound by the Panel's rulings and determinations herein.

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. That Claimant Mervin's claim is denied in its entirety.
2. That the parties shall bear their own costs and attorneys' fees, except as Other Costs and Forum Fees are addressed herein.
3. That any and all relief not specifically addressed above is denied in its entirety.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent Principal Financial Securities shall pay to NASD Regulation, Inc. the \$350.00 past due member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent Hamilton Investments shall pay to NASD Regulation, Inc. the \$350.00 past due member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

(2 pre-hearing sessions with the Panel x \$750) + (2 pre-hearing sessions with the Chairperson x \$300) + (4 hearing sessions x \$750) = \$5100 minus Claimant's hearing session deposit of \$750 = \$4350 balance due to NASD Regulation, Inc.

Claimant Mervin is assessed forum fees of \$2550.00. Claimant Mervin is entitled to offset this amount with her hearing session deposit of \$750.00. Claimant Mervin shall pay to NASD Regulation, Inc. \$1800.00.

Respondents Principal, Hamilton, Jones, Schenone, and Lavin are jointly and severally assessed forum fees of \$2550.00.

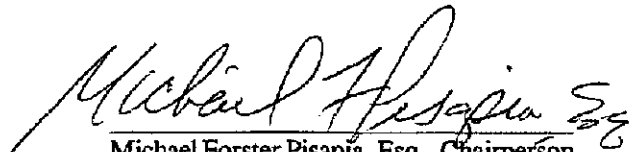
Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE SIGNED

Concurring Arbitrators' Signatures

I, Michael Forster Pisapia, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

3rd June 1998


Michael Forster Pisapia, Esq., Chairperson
Public Arbitrator

I, Harry Gould, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Harry Gould, Esq., Panelist
Public Arbitrator

I, Ellen S. Saltzman, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Ellen S. Saltzman, Esq., Panelist
Industry Arbitrator

Date Award Served by NASD Regulation:

June 24, 1998

DATE SIGNED

Concurring Arbitrators' Signatures

I, Michael Forster Pisapia, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Michael Forster Pisapia, Esq., Chairperson
Public Arbitrator

Harris
I, ~~Harry~~ Gould, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

6/10/98

Harris *Harry Gould*
Harry Gould, Esq., Panelist
Public Arbitrator

I, Ellen S. Saltzman, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Ellen S. Saltzman, Esq., Panelist
Industry Arbitrator

Date Award Served by NASD Regulation:

June 24, 1998

DATE SIGNED

Concurring Arbitrators' Signatures

I, Michael Forster Pisapia, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Michael Forster Pisapia, Esq., Chairperson
Public Arbitrator

I, Harry Gould, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Harry Gould, Esq., Panelist
Public Arbitrator

I, Ellen S. Saltzman, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

June 10, 1998

Ellen S. Saltzman, Esq., Panelist
Industry Arbitrator

Date Award Served by NASD Regulation:

June 24, 1998