

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Paul W. Melmon

v.

Arbitration No.
98-00071

Name of Respondent(s)

Dakin Securities Corporation
Robert Boyer Hutchinson

REPRESENTATION

For Claimant: Brian L. Zagon, Esq.
Keesal, Young & Logan
San Francisco, California

For Respondent Dakin Securities:
Anthony M. Englese, Esq.
San Francisco, California

For Respondent Robert Hutchinson: No Appearance

CASE INFORMATION

Statement of Claim filed: January 7, 1998

Claimant's Submission Agreement signed: January 5, 1998

Statement of Answer filed by Dakin Securities on February 24, 1998

Dakin Securities' Submission Agreement signed February 23, 1998

Respondent Robert Hutchinson did not file an Answer or Submission Agreement.

HEARING INFORMATION

The evidentiary hearing held in San Francisco, California, on July 21, 1998 and lasted 2 sessions.

CASE SUMMARY

Claimant alleged unauthorized trading of common stocks in his account, failure to make full restitution as promised for the unauthorized trading and failure to act in accordance with the fair and equitable principles of trade required by the NASD. Claimant also alleged breach of fiduciary duty, fraudulent misrepresentation, and violation of securities laws.

Respondent Dakin Securities stated that Claimant failed to notify it promptly of the bulk of the unauthorized trades, thereby increasing his losses. Dakin Securities further stated that Claimant and Respondent Hutchinson had agreed to give Hutchinson oral discretion in handling Claimant's account, unknown to Dakin and in violation of in-house policy.

RELIEF REQUESTED

Claimant requested damages of approximately \$40,000.00 plus margin interest paid, lost opportunity costs, prejudgement interest, punitive damages and attorney's fees.

Respondent Dakin Securities requested dismissal of the claim.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Robert Hutchinson was duly served with process and notice of the hearing and failed to answer the claim or otherwise respond or to appear at the hearing.

The parties have agreed to receive conformed copies of the Award while the originals remain on file with NASDR, Inc.

AWARD

After considering the pleadings, the testimony and documentary evidence presented, including the evidence submitted on the issue of jurisdiction as to respondent Robert Hutchinson, the arbitrators make the following findings of fact:

1. Claimant Paul Melmon opened an individual account with respondent Dakin Securities Corp. on or about March 26, 1997.
2. Three unauthorized transactions were made in claimant's account during the period of time in late July and early August. An additional 11 unauthorized trades were made

for a period of time from September 10, 1997 to November 13, 1997. The initial three trades were canceled by Dakin upon notification to Dakin's Compliance Officer. Of the 11 unauthorized trades, 5 were canceled. The remaining 6 are at issue in this arbitration.

3. Paul Melmon complained to the registered representative, Robert Hutchinson, in a timely manner after receipt of the confirmation slips of the trades in issue. Melmon was assured by Hutchinson that the transactions were in error and that the account could be restored.
4. On November 13, 1997, Hutchinson gave Melmon a personal check in the amount of \$16,500.00 to settle the account. The check was written on insufficient funds.
5. Melmon did not contact anyone at Dakin other than Hutchinson until November 17, 1998 when he wrote Mr. Skinner, President of Dakin.
6. Notice to Dakin was not so delayed as to constitute ratification of the transactions, or to preclude liability against Dakin by reason of estoppel or waiver.
7. Dakin failed to supervise Hutchinson as a registered representative.
8. Dakin did not evidence bad faith; nor was it guilty of fraud, oppression or malice.
9. Hutchinson intentionally and fraudulently made misrepresentations to Melmon regarding the transactions in the account with no intent to cancel the transactions or reimburse Melmon for the losses.
10. The issue of attorneys fees and costs was before the panel. California Civil Code § 1717.

WHEREFORE in full and final resolution of the issues submitted for determination, the undersigned arbitrators order that:

1. Respondents are jointly and severally liable for and shall pay to claimant the sum of \$45,981.07, reflecting the claimant's net loss in the amount of \$34,802.18, plus interest in the amount of \$1,856.00 and attorney's fees in the amount of \$9,129.60. Attorney's fees are awarded pursuant to California Civil Code Section § 1717.
2. Respondent Robert Hutchinson is severally liable for and shall pay to claimant the amount of \$34,802.18 for punitive damages pursuant to California Civil Code § 3294.
3. The claims for breach of fiduciary duty, fraudulent misrepresentation and the request for punitive damages as to respondent Dakin Securities Corp. are hereby denied and dismissed.

FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASDR shall retain Claimant's \$120.00 non-refundable filing fee, but shall refund Claimant's \$400 hearing session deposit.

Forum fees are assessed against Respondents, jointly and severally, payable to NASDR, Inc.

Total fees:

2 hearing sessions @ \$400/session

\$ 800.00

Concurring Arbitrators Signatures
Name

Public/Industry

Helen B. Culiner
Helen B. Culiner
Presiding Chairperson

Public

Thomas H. O'Conner
Thomas H. O'Conner

Industry

Homer M. Dalbey
Homer M. Dalbey

Public

Date Served:
AUG 18 1998

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