

**AWARD**

**NASD Regulation, Inc.**

In the Matter of the Arbitration Between

Name of Claimant

Loretta M. Whalen

NASD CASE NO. 98-00461

Names of Respondents

Pennsylvania Merchant Group, Ltd.,  
David Callan and William B. Fretz

**REPRESENTATION**

For Claimant: Robert Dyer, Esq. of Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., Orlando, Florida.

For Respondent Pennsylvania Merchant Group, Ltd. ("PMG"): David C. Franceski, Jr., Esq. of Stradley, Ronon, Stevens & Young, LLP, Philadelphia, Pennsylvania.

For Respondents David Callan ("Callan") and William B. Fretz ("Fretz"): Paula D. Shaffner, Esq. of Saul, Ewing, Remick & Saul, LLP, Philadelphia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on February 10, 1998. Claimant's Submission Agreement signed on February 6, 1998.

Statement of Answer filed by Respondent PMG on April 13, 1998. Respondent PMG's Submission Agreement signed on April 13, 1998 by Linda D. Simon, Managing Director of Pennsylvania Merchant Group, Ltd.

Statement of Answer (adopting by reference the Answer of Respondent PMG) filed by Respondents Callan and Fretz on November 13, 1998. Respondents Callan and Fretz failed to file executed Submission Agreements.

**HEARING INFORMATION**

On September 10, 1998, a telephonic pre-hearing conference lasting one session was conducted with the arbitration panel (the "Panel"). On October 6, 1998, a telephonic pre-hearing conference lasting one session was conducted with the Chairperson of the Panel.

### CASE SUMMARY

Claimant brought this action pursuant to Chapter 15 of the Florida Investor Protection Act. Claimant alleged that Respondents traded her account far more rapidly and speculatively than was justified. Claimant further alleged that Respondents improperly used margin trading to increase the size and volume of purchases and, when she tried to reduce the margin balance, instead purchased additional stock. Claimant also alleged that Respondents engaged in excessively reckless and unsuitable trading utilizing a margin strategy which did not fit the circumstances or objectives of retired customers such as herself.

Respondents denied all of the allegations in the Statement of Claim and alleged that Respondent Fretz had no involvement with Claimant's account. Respondents alleged that Claimant had an existing margin account which preceded the involvement of any of the Respondents in Claimant's investments. Respondents asserted that Claimant was frequently in contact with Respondent Callan about the account and often discussed the margin balance. Respondents also asserted that the dividends on Claimant's core holdings were not, alone, sufficient to both maintain Claimant's spending level and reduce the margin balance, and Claimant was not willing to sell any core holdings. Respondents further alleged that the account actually enjoyed a profit during the time that the Claimant maintained her account at PMG. Respondents claimed that they properly managed, serviced and supervised the account in accordance with the investment objectives indicated by Claimant and her husband when they transferred the account to PMG.

### RELIEF REQUESTED

Claimant requested damages in an unspecified amount pursuant to Florida Statutes, Chapter 517 including attorneys' fees, as well as punitive damages, the costs and expenses of this action, and such other relief as the Panel deemed appropriate.

Respondents requested that Claimant's claim be denied in all respects, and that they be compensated for the costs, including attorneys' fees, incurred in defending against this action.

### 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.

Respondents Callan and Fretz did not file with the NASD Regulation, Inc., Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code"), and having appeared in the action and having answered the claim are bound by the determination of the Panel on all issues submitted.

On December 23, 1998, Respondent Fretz filed a Motion to Dismiss on the basis that he had not been involved in the Claimant's account, which Motion was opposed by Claimant. On January 8, 1999, the Panel denied the Motion to Dismiss without prejudice to renewal of the Motion at the evidentiary hearing.

Prior to the evidentiary hearing, NASD Regulation, Inc. was advised that Claimant and Respondents PMG and Callan had settled all claims, and that Claimant had agreed to withdraw with prejudice her claim against Respondent Fretz. The parties executed and filed a Stipulation providing that all claims against Fretz are withdrawn with prejudice and consenting to expungement of this arbitration from William B. Fretz's Central Registration Depository ("CRD") record.

### AWARD

After considering the pleadings and the Stipulation of Claimant, Respondent Callan and Respondent Fretz (incorporated by reference herein), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Any and all references to the above captioned arbitration shall be expunged from the CRD record of Respondent William B. Fretz.

### FORUM FEES

Pursuant to Rule 10332(c) and (g) of the Code, the Panel has assessed forum fees in the sum of \$3,300.00 (1 pre-hearing conference with the Panel x \$600.00 and 1 pre-hearing conference with the Chairperson x \$300.00, plus 4 sessions scheduled within 8 business days after NASD Regulation, Inc. received notice that the matter had been settled x \$600.00) as follows:

Claimant is hereby assessed the sum of \$1,650.00 for which NASD Regulation, Inc. shall retain the \$700.00 hearing session deposit previously paid by Claimant in partial satisfaction thereof, leaving a balance due in the amount of \$950.00.

Respondents PMG, Callan and Fretz are hereby assessed, jointly and severally, the sum of \$1,650.00.

### OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimant has paid to NASD Regulation, Inc. the \$250.00 claim filing fee.

Pursuant to Rule 10333 of the Code, Respondent PMG has paid to NASD Regulation, Inc. the \$1,200.00 member surcharge, \$600.00 pre-hearing process and \$2,000.00 hearing process fees previously invoiced.

Pursuant to Rule 10319 of the Code, Respondent PMG has paid to NASD Regulation, Inc. the \$600.00 postponement fee previously invoiced in connection with the adjournment of the hearing dates scheduled for December 7 - 11, 1998.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

          /s/            
Robert Lee Shapiro, Esq.  
Chairperson

Public

          /s/            
James W. Neel

Public

          /s/            
Augusto V. Perrotta

Industry

Date of Decision: January 19, 1999