

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Ira Cohen, (Claimant) vs. Emmett A. Larkin Co. Inc., Royal Hutton Securities Corp., and Alfred Caceres, (Respondents)

Case Number: 99-05074

Hearing Site: Buffalo, New York

REPRESENTATION OF PARTIES

Claimant, Ira Cohen, hereinafter referred to as "Claimant": Gavin J. Tighe, Esq., Gardiner, Roberts, Toronto, Ontario, Canada.

Respondent, Emmett A. Larkin Co. Inc. ("Larkin"): Peter E. Root, Esq., Orrick, Herrington & Sutcliffe LLP, San Francisco, CA. Previously represented by: Melvin L. Peterson, Executive Vice President, Emmett A. Larkin Co. Inc., San Francisco, CA.

Respondent, Royal Hutton Securities Corp. ("Hutton"), did not appear at the hearings in this matter. Previously represented by: Lawrence R. Gelber, Esq., a sole practitioner, Brooklyn, NY and Michael Utilla, Esq., a sole practitioner, Brooklyn, NY, respectively.

Respondent, Alfred Caceres ("Caceres"), appeared *pro se*. Previously represented by: Michael Utilla, Esq., a sole practitioner, Brooklyn, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 8, 1999.

Response to Larkin's Request for Dismissal filed by Claimant on or about: August 16, 2000.

Additional Response to Larkin's Request for Dismissal filed by Claimant on or about: August 25, 2000.

Claimant signed the Uniform Submission Agreement.

Statement of Answer and Request for Dismissal filed by Larkin on or about: February 23, 2000.

Brief in Support of its Motion to Dismiss filed by Larkin on or about: August 22, 2000.

Larkin signed the Uniform Submission Agreement: February 23, 2000.

Joint Statement of Answer filed by Hutton and Caceres on or about: February 23, 2000.

Hutton did not sign a Uniform Submission Agreement.

Caceres did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; negligence; unsuitability; misrepresentations; discretionary trading without authorization; excessive mark ups of commissions; deceptive and manipulative sales practices; failure to properly supervise; churning; unauthorized transactions; and violations of securities laws. Claimant's claim involved the stocks of Ivillage Inc., Ibis Technology Corp., Peapod Inc., Priceline.com Inc., Learner's World Inc., NetGravity Inc., and Worldwide Data Inc.

Unless specifically admitted in its Answer, Larkin denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim and each cause of action therein fails to state facts sufficient to specify any cause of action against Larkin; Larkin exercised reasonable care at all times; and Larkin did not have knowledge of, and in the exercise of reasonable care could not have acquired knowledge of, any of the acts or transactions alleged and set forth in the Statement of Claim.

Unless specifically admitted in their Answer, Hutton and Caceres denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state a claim for unsuitability; Claimant's conduct in the instant matter, at an absolute minimum, ratified the trading which occurred in his account; Claimant very specifically and in all events had knowledge of, and assumed the risks incident to, investing in the securities market; assuming that Claimant suffered damages, such damages were caused or contributed to by persons, conditions, or events beyond the control of Hutton and/or Caceres; Claimant has failed to establish loss causation; Hutton and/or Caceres never materially misrepresented the offerings solicited to Claimant in any way; Claimant's allegation that Hutton and Caceres breached their fiduciary duties to him must fail, since Claimant's relationship was that of an ordinary broker to client's; Claimant authorized and directed the execution of all transactions in his securities account, including knowingly, intelligently, and voluntarily purchasing and holding onto the positions which he now seeks to question; Claimant's failure to complain contemporaneously with his receipt of any one of the Statements of Confirmation for the transactions in question speaks volumes as to his credibility; Hutton and Caceres, in discharging their duties to Claimant, acted in good faith and exercised at least that degree of care, diligence, and skill which ordinary prudent persons would exercise in similar circumstances and like positions; Claimant failed to use due diligence with respect to the transactions and acts complained of and, accordingly, is barred from asserting or recovering for any such transactions or acts; the alleged losses of Claimant were proximately caused by his own negligence in relation to the transactions complained of; Claimant is not entitled to

punitive damages or attorneys' fees; not one scintilla of evidence exists that Claimant made any control person aware of any of the alleged improper acts at the time of the transactions; there were sufficient supervisory procedures in place to comport with the regulatory requirements as they relate to Hutton's employment of Caceres; and the Statement of Claim is insufficient as to any cause of action against Hutton and/or Caceres.

RELIEF REQUESTED

Claimant requested:

- a. Restitution of any and all amounts forwarded and placed on account by the Claimant to and with the Respondents;
- b. Damages for breach of fiduciary duty, breach of contract, and negligence in the amount of \$239,340.50;
- c. Disgorgement of all profits, interest, commissions, and fees of any description paid to or obtained by the Respondents in relation to the subject accounts;
- d. Punitive, aggravated, and exemplary damages in the amount of \$100,000.00;
- e. Pre-judgment and post-judgment interest;
- f. Costs of this arbitration incurred by the Claimant, including legal fees and disbursements; and
- g. Such other and further relief as the Panel may deem just.

Larkin requested that it be dismissed as a Respondent in this matter, and that Claimant be required to reimburse Larkin for the NASD member surcharge assessed against it. Larkin also requested that it be awarded its costs and expenses in the amount of \$2,500.00.

Hutton and Caceres requested that Claimant's Statement of Claim be denied in its entirety as against them.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Hutton has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Hutton present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Hutton and Caceres did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

Pursuant to the agreement of all parties and the Panel, Respondent Caceres was allowed to submit a sworn affidavit in lieu of attendance at the hearing in person. The affidavit was entered as Arbitrators' Exhibit #2 and read into the record by the Chairperson. None of the parties present elected to exercise their option to cross examine Caceres by telephone during the hearing.

Respondent Larkin filed a Motion to Dismiss, which was denied by the Panel.

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.

AWARD

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

1. Larkin and Hutton be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$60,430.00 as compensatory damages, plus interest at the rate of 6% per annum accruing from the date of this Award until the date of payment.
2. Hutton be and hereby is solely liable for and shall pay to Claimant the sum of \$10,000.00 as compensatory damages, plus interest at the rate of 6% per annum accruing from the date of this Award until the date of payment.
3. Caceres be and hereby is solely liable for and shall pay to Claimant the sum of \$10,000.00 as compensatory damages, plus interest at the rate of 6% per annum accruing from the date of this Award until the date of payment.
4. Claimant's request for punitive damages is hereby denied.
5. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Emmett A. Larkin Co. Inc. and Royal Hutton Securities Corp. are parties.

Emmett A. Larkin Co. Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Royal Hutton Securities Corp.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

Jan. 30 & 31 and Feb. 1, 2001, adjournment by Hutton	= \$1,125.00
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Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel x \$1,125.00 = \$3,375.00

Pre-hearing conferences:	August 8, 2000	1 session
	February 28, 2001	1 session
	March 16, 2001	1 session

Four (4) Hearing sessions x \$1,125.00 = \$4,500.00

Hearing Dates:	May 21, 2001	2 sessions
	May 22, 2001	2 sessions

Total Forum Fees = \$7,875.00

The Panel has assessed all of the forum fees jointly and severally against Larkin and Hutton.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Refund Due Claimant	= \$1,125.00

2. Larkin be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$2,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,500.00

3. Hutton be and hereby is solely liable for:

Member Fees	= \$4,600.00
<u>Adjournment Fee</u>	= \$1,125.00
Total Fees	= \$5,725.00
<u>Less payments</u>	= \$3,092.79
Balance Due NASD Dispute Resolution, Inc.	= \$2,632.21

4. Larkin and Hutton be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$7,875.00
Total Fees	= \$7,875.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$7,875.00

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Donald G. Kennedy	-	Public Arbitrator, Presiding Chair
James C. Galloway	-	Public Arbitrator
Jeffrey Mark Schwartz	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Donald G. Kennedy
Donald G. Kennedy
Public Arbitrator, Presiding Chair

Aug. 2, 2001
Signature Date

James C. Galloway
Public Arbitrator

Signature Date

Jeffrey Mark Schwartz
Industry Arbitrator

Signature Date

August 16, 2001
Date of Service (For NASD office use only)

ARBITRATION PANEL

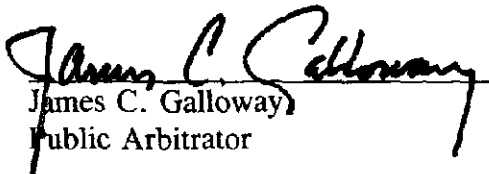
Donald G. Kennedy	-	Public Arbitrator, Presiding Chair
James C. Galloway	-	Public Arbitrator
Jeffrey Mark Schwartz	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Donald G. Kennedy
Public Arbitrator, Presiding Chair

Signature Date


James C. Galloway
Public Arbitrator

August 3, 2001
Signature Date

Jeffrey Mark Schwartz
Industry Arbitrator

Signature Date

August 16, 2001
Date of Service (For NASD office use only)

ARBITRATION PANEL

Donald G. Kennedy	-	Public Arbitrator, Presiding Chair
James C. Galloway	-	Public Arbitrator
Jeffrey Mark Schwartz	-	Industry Arbitrator

Concurring Arbitrators' Signatures

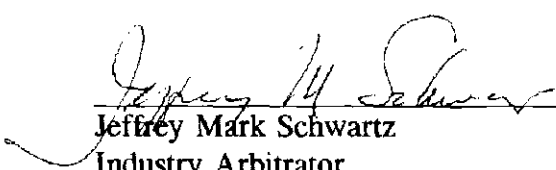
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Donald G. Kennedy
Public Arbitrator, Presiding Chair

Signature Date

James C. Galloway
Public Arbitrator

Signature Date



Jeffrey Mark Schwartz
Industry Arbitrator



Signature Date

August 16, 2001

Date of Service (For NASD office use only)