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Trading Dispute Is Shrouded in Accusations of Bias

By Andrew Ross Sorkin

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Youssef Fakih attached a tape recorder to the telephone and pressed the record button before dialing his stockbroker.

Michael S. Cohen, sitting at his desk on the trading floor of Gruntal & Company, a midsize brokerage firm on East 42nd Street, answered on the first ring.

At first, Mr. Fakih and Mr. Cohen exchanged pleasantries. Then the conversation turned argumentative.

''I found out you lost the money purposely,'' said Mr. Fakih, who had lost more than a half-million dollars in just over a year and a half.

''I don't like liars,'' replied Mr. Cohen, who is Jewish. ''You lied to me. You told me that you were Jewish.''

Mr. Fakih, an Arab immigrant from Lebanon, then asked: ''So in other words, if I was a Jewish, you wouldn't lose me money?''

''Listen, you are what you are,'' Mr. Cohen said. ''And quite frankly, the fact that you lost money, I really don't care.''

That was one of the last of more than two dozen telephone calls that Mr. Fakih had recorded over several months as part of what he said was an effort to build a case against Mr. Cohen and Gruntal. Mr. Fakih provided excerpts of tapes of the conversations as well as corresponding transcripts to The New York Times.

Mr. Fakih and his brother, Ali, are seeking more than $36 million from Mr. Cohen and Gruntal in arbitration, accusing them of conspiring to intentionally lose the Fakih brothers' money in the stock market because they are Arabs.

Mr. Cohen does not challenge the authenticity of the tapes, but his lawyers, led by William B. Wachtel, argue that he was tricked into disparaging Arabs as part of a fraud perpetrated by the Fakih brothers to extort money from him and Gruntal. Their plan, his lawyers say, is to exploit tensions in the Middle East and try to curry sympathy for Arabs.

''It's all bogus,'' Mr. Cohen said in a brief telephone interview last week before declining to discuss the matter further and referring questions to his lawyer.

Mr. Cohen's lawyers said that he neither deliberately lost Mr. Fakih's money nor tried to do so because of any bias against Arabs. He said he just followed Youssef Fakih's instructions to speculate in technology companies whose stocks had slumped. Mr. Cohen's lawyers argue that Mr. Fakih told their client to say that he had deliberately lost the money and that he hated Arabs in an effort to attract a prospective and fictitious Jewish client.

Mr. Fakih's lawyer, Stuart D. Meissner, denied it was a fraud and said his client never told Mr. Cohen anything of the kind.

The case has spilled into criminal court. Mr. Cohen has been charged with harassment, a misdemeanor, accused of making threatening phone calls to Mr. Fakih after he filed his complaint. ''I told you to back off, that's it,'' Mr. Cohen is recorded as saying into Mr. Fakih's voice mail in the only full sentence he spoke without an obscenity. Mr. Cohen is scheduled to be arraigned today in Brooklyn.

The way Mr. Fakih tells it, he suspected something was amiss last fall, when he heard from a friend, Joseph Cohen (who is not related to Michael) that Michael Cohen had bragged about intentionally losing his money because of his ethnicity. After reviewing his broker statements, Mr. Fakih said he thought that Mr. Cohen had been buying stocks when he had been told to sell and had sold stocks when he had been told to buy, erratically shorting stocks and trading on margin -- borrowed money -- without authorization.

Mr. Fakih decided to have a Jewish friend, Lazar Markowitz, pretend to be a prospective client with $3 million and approach Mr. Cohen about opening an account, hoping Mr. Markowitz could persuade Mr. Cohen to acknowledge, on tape, that he intentionally lost Mr. Fakih's money.

In several recorded calls, Mr. Cohen is heard telling Mr. Markowitz that he deliberately lost Mr. Fakih's money by buying bad stocks and shorting good stocks. ''I told him to buy Rambus,'' Mr. Cohen tells Mr. Markowitz, referring to Rambus Inc., a technology company that has fallen more than 90 percent from its peak in 2000.

''I told him to buy Lucent Technologies,'' Mr. Cohen added, referring to another stock that fell significantly last year. ''Shorting some good stocks. When you short a good stock, and it goes up, you lose money.''

When the caller posing as a potential client asked how he knew to switch strategy on Rambus and short the stock as it was about to go up, Mr. Cohen said that he sometimes got tips about Rambus from a friend at another financial institution. ''I have special information, directly,'' he said in one conversation.

In another recorded conversation, Mr. Cohen is asked whether Gruntal employs any Arab brokers. His answer: ''Oh, no, no. They're too stupid.''

Mr. Cohen's lawyers said that he only executed trade orders directly from Mr. Fakih and that he concocted the story about using inside information and losing the money on purpose because Mr. Fakih told him it would help him win Mr. Markowitz's business. They said Mr. Cohen did not act on inside information.

In an affidavit taken as part of the arbitration case from Gary Lipton, a friend of Mr. Cohen, he said that he heard Mr. Fakih instruct Mr. Cohen to make the derogatory comments. ''I told the Markowitz brothers that you and your manager hate Arabs. They know me by the name of Joe, and they think I'm Jewish,'' Mr. Fakih told Mr. Cohen, according to the affidavit. ''Just tell them that and you will get this $3 million account.''

A spokesman for Gruntal declined to comment, citing the case.

Mr. Cohen's lawyers discounted Mr. Fakih's argument that he is an inexperienced stock trader. They cite a Gruntal document that they said Mr. Fakih filled out when he opened his account; in it, he apparently said he had 10 years of trading experience and checked off ''short-term trading'' as his investment objective and ''aggressive'' as his risk exposure. Mr. Fakih also checked ''yes'' when asked if his ''investment objectives allow speculation.''

Mr. Cohen's lawyers also asserted that Mr. Fakih had traded on margin and had short traded, and lost tens of thousands of dollars, at a different firm before opening his account at Gruntal. The lawyers said a statement from CyberCorp, an online broker, for an account in Mr. Fakih's name says that in March 2001, Mr. Fakih bought $82,400 of Rambus stock on margin as well as $24,740 of PMC Sierra on margin. In that month, Mr. Fakih appears to have lost $76,810.32.

Mr. Meissner said that his client did not fill in the Gruntal document himself; he said that Mr. Fakih signed a blank form and that Mr. Cohen filled in the rest.

Mr. Meissner also said that Mr. Fakih never actually traded any stocks in the CyberCorp account even though it was in his name. In an affidavit provided to The New York Times by Mr. Meissner, a friend of Mr. Fakih's, Paul Diamond, said that he had made the trades. ''I submitted all trades within said account,'' Mr. Diamond said in the affidavit. ''As Fakih was not familiar with the stock market, I had to explain to him many aspects so that he may understand the trades I was making.''

Further complicating the case is the fact that Gruntal recently sold its brokerage accounts to Ryan, Beck & Company, which insists that it only bought the assets of Gruntal and assumes no liability related to the suit.

Still, some experts said that if Gruntal is found liablees the arbitration, Ryan, Beck could also face some liability, in part, because they continue to employ Mr. Cohen and promote Gruntal as a division of Ryan, Beck.

Bob Berson, president of Ryan, Beck, declined to comment on the matter.