

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Name of the Claimants

Lilyan Busk and Raymond Busk

Case Number: 00-05480

Name of the Respondent

Dreyfus Brokerage Services

Hearing Site: Chicago, Illinois

REPRESENTATION OF PARTIES

Claimants, Lilyan Busk and Raymond Busk Busk, hereinafter collectively referred to as "Claimants": Thomas F. Burke, Esq. with law offices located in Chicago, Illinois.

Respondent, Dreyfus Brokerage Services Dreyfus Brokerage, hereinafter referred to as "Respondent": Stephen P. Bedell, Esq. of the firm Gardner, Carton & Douglas located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed (on or about): December 11, 2000

Claimant, Busk, signed the Uniform Submission Agreement: November 30, 2000

Statement of Answer filed by Respondent, Dreyfus Brokerage, on or about: February 14, 2001

Respondent, Dreyfus Brokerage, signed the Uniform Submission Agreement: February 02, 2001

CASE SUMMARY

Claimants Busk asserted the following causes of action: Negligence, Breach of Fiduciary Duty, Misrepresentation, Omission of Facts and Suitability.

The causes of action relate to the Claimant's accounts with Dreyfus Brokerage.

Unless specifically admitted in its Answer, Respondent Dreyfus Brokerage denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Failure to state a cause of action upon which relief can be granted;
2. Claims are barred by the applicable statutes of limitation;
3. Claims are barred by the doctrine of laches;
4. Claimants assumed the risks of investing in the securities and thus have no basis for any claim against any other person or entity;

5. Claimants approved, authorized, ratified and/or acquiesced in the trading that forms the basis of the subject complaint;
6. Claimants are barred from recovery under the doctrine of waiver because they received timely reports of individual transactions and monthly account statements and waived any cause of action against Respondents by accepting these confirmations and monthly statements without objection;
7. Any losses sustained by the Claimants were the result in whole or in part of their own contributory or comparative negligence;
8. Claimants cannot recover from Respondents because the handling of their account was in accordance and compliance with applicable brokerage industry standards, guidelines and regulatory requirements; and
9. Claimants failed to mitigate the consequences of any alleged fraud, negligence or wrongdoing by Respondents, which could have been mitigated.

RELIEF REQUESTED

Claimant Busk requested:

Compensatory Damages	\$142,000.00
Interest	\$ 11,895.91
Other Costs	unspecified

Respondent Dreyfus Brokerage requested:

Other Monetary/Non-Monetary Relief if any: entry of award in its favor

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators reached a unanimous conclusion, as follows:

Respondent has credibly demonstrated that it regularly notified all of its customers, including Claimants, that Claimants' type of option strategy was a high risk strategy. It did this through mailing forms and requiring written information from Claimants.

Claimants allege that despite these continuous notifications, and despite Mr. Busk's involvement in the securities industry, including prior Series 7 licensing, they remained unaware of the reality of the risks inherent in the strategy.

Claimants point to the law, which includes Rule 405 regulations that require due diligence by Respondent. Indeed, Respondent's own internal rules require such diligence and allow personal interviews of customers.

The 1991 Claimants' information supplied to Respondent shows a birth date of 1917, or 74 years of age at that time. Respondent's own internal rules require due diligence to learn more about the investor. In 1999, when Respondent learned that most of the Claimants' account money was that of a retired elderly widow, they required liquidation of the OEX option positions. It is highly likely that a due diligence inquiry or interview in or about 1991, or before, would have revealed

the truth. This is crucial even though this was an account with a discount broker, who does not provide investment advice.

The Panel also points out that the Petersen case, which both parties briefed, was a case involving a clearing broker who had no direct relationship to the claimant, and had allocated account supervision to the claimant's broker, by contract. The current case is very different in that Respondent dealt directly with the Claimants.

The Panel has reached the following conclusions:

1. The law requires, as do Respondent's procedures, at least enough due diligence to know relevant facts about Claimants.
2. Such due diligence was not performed until 1999.
3. Claimants provided inaccurate information to Respondent on several occasions, but always reported income too low for option trading. Respondents' own procedures make this point, notwithstanding the expert testimony.
4. Claimants cannot choose to ignore the many written warnings they received about the speculative nature of option trading.
5. Claimant Raymond Busk, who previously held a series 7 license and consistently claimed significant trading experience on Respondent's forms, cannot now be perceived as a naïve investor.

In light of the foregoing, the Panel believes that justice requires that each party bear a portion of the loss, and that the correct amount of loss was more than \$ 100,000.00 after including gains on option trades for 1996-1999 as well as losses for such period.

The payment of 50,000 dollars to Claimants is, in this Panel's unanimous view, a proper result in that it recognizes both parties' merit and fault.

The panel suggests that Claimants inform their current and future securities dealers, in writing, that most of their money is retirement funds and has been contributed primarily by Lilyan Busk, who is more than 84 years of age.

AWARD

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

1. Dreyfus Brokerage Services is liable to and shall pay to Claimants Lilyan Busk and Raymond Busk the sum of \$50,000.00 as compensatory damages.
2. Dreyfus Brokerage Services is liable to and shall pay to Claimants Lilyan Busk and Raymond Busk 6% per annum to begin to accrue calendar ten days after service of this award and to cease accruing upon payment.
3. Parties are to bear their own costs, including attorney's fees.
4. Any and all relief not specifically addressed herein, is 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. Dreyfus Brokerage Services is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$2,500.00</u>
Total	= \$4,600.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

Respondent Dreyfus Brokerage requested adjournment of the April 22-24, 2002 hearing dates
Adjournment Fee = \$ 1,125.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with a single arbitrator at \$450.00	= \$ 450.00
Pre-hearing conference: February 28, 2002	1 session

One (1) Pre-hearing session with Panel at \$1,125.00	= \$1,125.00
Pre-hearing conference: December 13, 2001	1 session

Six (6) Hearing sessions at \$1,125.00	= \$6,750.00
Hearing Dates: May 14, 2002	2 sessions
May 15, 2002	2 sessions
May 16, 2002	2 sessions

Total Forum Fees	= \$8,325.00
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1. The Panel has assessed \$4,162.50 of the forum fees jointly and severally to Lilyan Busk and Raymond Busk.
2. The Panel has assessed \$4,162.50 of the forum fees to Dreyfus Brokerage Services.

FEE SUMMARY

1. Claimants, Lilyan Busk and Raymond Busk, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 4,162.50
Total Fees	= \$ 4,462.50
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,037.50

2. Respondent, Dreyfus Brokerage Services, is solely liable for:

Member Fees	= \$ 4,600.00
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	= \$ 4,162.50
Total Fees	= \$ 9,887.50
<u>Less payments</u>	= \$ 4,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,037.50

All balances are payable to NASD Dispute Resolution, Inc. and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Philip J. Glick, Esq. - Public, Presiding Chairperson
Irving A. Chesler, J.D. - Public Arbitrator
Michael J. Stoken - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Philip J. Glick

06/18/02

Philip J. Glick, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/ Irving A. Chesler

06/14/02

Irving A. Chesler, J.D.
Public Arbitrator

Signature Date

/s/ Michael J. Stoken

06/12/02

Michael J. Stoken
Non-Public Arbitrator

Signature Date

06/19/02

Date of Service (For NASD Dispute Resolution office use only)

06/11/02 TUE 09:33 FAX

NASD REGULATION

NASD Dispute Resolution, Inc.
Arbitration No. 00-05480
Award Page 5 of 5

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Irving A. Chesler, J.D. - Public Arbitrator
Michael J. Stoken - Non-Public Arbitrator

Concurring Arbitrators' Signatures


Philip J. Glick, Esq.
Public Arbitrator, Presiding Chairperson

6/15/02
Signature Date

Irving A. Chesler, J.D.
Public Arbitrator

Signature Date

Michael J. Stoken
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

08/11/02 TUE 09:43 FAX

NASD REGULATION

NASD Dispute Resolution, Inc.

Arbitration No. 00-05480

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Irving A. Chesler, J.D. - Public Arbitrator

Michael J. Stoken - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Philip J. Glick, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Irving A. Chesler

Irving A. Chesler, J.D.
Public Arbitrator

6-14-02

Signature Date

Michael J. Stoken
Non-Public Arbitrator

Signature Date_____
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution, Inc.
Arbitration No. 00-05480
Award Page 5 of 5

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Michael J. Stoken - Non-Public Arbitrator

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Philip J. Glick, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Irving A. Chesler, J.D.
Public Arbitrator

Signature Date


Michael J. Stoken
Non-Public Arbitrator


Signature Date

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