

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Ruth M. Musloe and Marcella M. Tekstar

Claimants

and

Drexel Burnham Lambert and
Peter and Jane Doe Leifer

Respondents

A W A R D
88-00663

CASE SUMMARY

In a claim filed with the NASD on February 24, 1988, Claimant Ruth M. Musloe ("Musloe") and Claimant Marcella M. Tekstar ("Tekstar") alleged that Respondents Drexel Burnham Lambert, Inc. ("Drexel Burnham") and Peter Leifer ("Leifer") engaged in fraudulent conduct concerning the purchase and sale of securities for Musloe's and Tekstar's securities accounts in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5 promulgated thereunder. Additionally, Musloe and Tekstar alleged that the conduct of Drexel Burnham and Leifer constituted violations of the Arizona Securities Statute, Arizona Racketeering Statute and various NASD and NYSE rules relating to the regulation of securities broker-dealers.

Drexel Burnham and Leifer maintained that there was no wrongdoing and therefore no liability to Musloe and Tekstar as a correspondence of handling their securities accounts. Drexel Burnham and Leifer denied that Musloe and Tekstar were unsuitable for options trading or that any unauthorized trades were made in Musloe's and Tekstar's accounts. Drexel Burnham also maintained that Leifer was at all times properly supervised while he serviced Musloe's and Tekstar's accounts.

RELIEF REQUESTED

Musloe sought actual damages in the amount of \$46,138 and Tekstar sought actual damages in the amount of \$57,198. Musloe and Tekstar also requested an award of interest at the legal rate of 10% pursuant to A.R.S. Section 44-2001 on the principal sum invested until the award is paid, attorney's fees and costs, treble damages and pre-judgment interest pursuant to A.R. S. Section 13-2314(a) and any other just and equitable relief. Drexel Burnham and Leifer requested dismissal of the claim's and an award of costs in their favor from Musloe and Tekstar.

AWARD

On March 13, 1989 in Scottsdale, Arizona during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 28, 1988 by Claimants Ruth M. Musloe and Marcella M. Tekstar, on May 27, 1988 by Respondent Peter A. Leifer and on June 1, 1988 by Karen M. Cullen, Vice President on behalf of Respondent Drexel Burnham Lambert, Inc.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, the parties' trial memoranda and the parties' post-hearing memoranda, has decided in full and final resolution of the issues submitted for determination as follows:

MUSLOE'S CLAIM

1. Drexel Burnham and Leifer are jointly and severally liable for and shall pay to Musloe, the sum of Thirty Eight Thousand Five Hundred Eighty Five Dollars and Ninety-Six Cents (\$38,585.96);
2. Pre-judgment interest at the rate of 10% per annum is awarded on the above stated sum, from and inclusive of August 31, 1987 to and inclusive of the date this award is served on the respective parties by the NASD;
3. Interest at the rate of 10% shall be paid on the total sum awarded Musloe from and inclusive of the date the award is served on the respective parties to and inclusive of the date this award is paid;

4. No treble damages are awarded to Musloe;

TEKSTAR'S CLAIM

5. Drexel Burnham and Leifer are jointly and severally liable for and shall pay to Tekstar, the sum of Forty Six Thousand Four Hundred Eighty Five Dollars and No Cents (\$46,485.00);

6. Pre-judgment interest at the rate of 10% per annum is awarded on the above-stated sum, from and inclusive of August 31, 1987 to and inclusive of the date this award is served on the respective parties by the NASD;

7. The amount of damages payable to Tekstar by Drexel Burnham and Leifer shall be trebled. In making this award of treble damages to Tekstar against Drexel Burnham and Leifer, jointly and severally, the panel considered the state and federal case-law cited in Claimants' and Respondents' hearing memoranda and post-hearing memoranda as well as the Arizona Civil Racketeering Statute, A.R.S. Section 13-2314(a) and determined that authority existed for an award of treble damages in favor of Tekstar;

8. Interest at the rate of 10% shall be paid on the total trebled sum awarded Tekstar from and inclusive of the date the award is served on the respective parties to and inclusive of the date this award is paid;

9. Drexel Burnham and Leifer shall also be jointly and severally liable for and shall pay to Musloe and Tekstar, jointly, the sum of Forty-Thousand Dollars and No Cents (\$40,000.00) as a reasonable attorneys' fee. In determining to award attorneys' fees to Musloe and Tekstar, the panel considered the state and federal authorities cited and arguments set forth in the parties post-hearing memoranda and determined that authority existed for an award of attorneys' fees in favor of Musloe and Tekstar;

10. The parties shall each bear any other costs and expenses incurred in this proceeding which are not specifically enumerated or addressed herein; and

11. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$750.00 filing fee previously deposited with the NASD by the Musloe and Tekstar. Drexel Burnham and Leifer are jointly and severally assessed and shall pay to the NASD, as forum fees, the sum of \$1,500.00

Panel Members Concurring

Dated: July 17, 1989

/S/ Jeffrey Messing, Esq.
Presiding Chairman

Dated: July 19, 1989

/S/ J. Noiland Franz, Esq.

Dated: July 11, 1989

/S/ Steven Chanen, Esq.