

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
JOHN and LOUISE R. ZERVAS,)
) Claimants,)
) Case #88-00942
vs.) Award
)
DREXEL BURNHAM LAMBERT, INC., STEVEN)
FLACCO and JAMES STRAINER,)
) Respondents.)
)

Heard before the members of the Arbitration Panel

John B. Kelley, Esq.
Harry Polansky
Gary L. Stark

CASE SUMMARY

This claim was filed with the NASD, Inc. on March 23, 1988. The hearing was conducted in Fort Lauderdale, Florida on September 18 and 19, 1989, with a total of four (4) sessions.

Claimants John and Louise Zervas ("Zervas") alleged that Respondents Drexel Burnham Lambert Inc. ("Drexel"), Steven Flacco ("Flacco"), and James Strainer ("Strainer") solicited trades in certain stock for Claimants' account; made unauthorized trades; churned the account; made misrepresentations of material facts and omitted to state material facts; that Respondents' conduct violated Section 12(2) of the 1933 Securities Act and Section 517.301, Florida Statutes; constituted common law fraud; negligence; negligent supervision; negligent retention of Flacco; and breach of fiduciary duty, all of which caused Claimants to suffer a loss.

Respondents denied all allegations of wrongdoing; alleged that Claimants were knowledgeable, advised of the risks; made all decisions regarding their account; received commission discounts on all trades; and that Claimants' losses were the result of the October 1987 market decline. Respondents further asserted the affirmative defenses of assumption of risk; authorization of all trades; ratification; and losses caused by market conditions and not by action of Respondents.

RELIEF REQUESTED

Claimants requested damages exceeding \$140,000.00; rescission, interest, punitive damages, attorney's fees, and other relief. Respondents requested dismissal of claims, costs, and attorney's fees.

AWARD

On September 18 and 19, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on February 18, 1988, and by Respondents on August 1, 1988. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. 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 the NASD, Inc.
2. Respondents Drexel, Flacco and Strainer are liable, jointly and severally, and shall pay to Claimants the amount of Forty Six Thousand and 00/100 (\$46,000.00) Dollars.
3. Claimants' requests for punitive damages and attorney's fees are hereby denied in their entirety.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondent, Drexel, is hereby assessed forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars (four sessions x \$750.00), of which Seven Hundred Fifty and 00/100 (\$750.00) Dollars shall be paid directly to the Claimants, and Two Thousand Two Hundred Fifty and 00/100 (\$2,250.00) Dollars shall be paid directly to the NASD, Inc. The National Association of Securities Dealers, Inc. shall retain the Seven Hundred Fifty (\$750.00) Dollar filing fee previously deposited by the Claimants.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

John B. Kelley Esq., Harry Polansky and Gary L. Stark

Dated this 19th day of October 1989.