

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Sidney Schnipper
Elaine Schnipper, Municipal Pension
Protectors, Inc. and Municipal Plan
Protectors, Inc.

Claimants

vs.

Muller & Co., Inc.
Philips Appel & Walden, Inc.
Broadcort Capital Corp.

Respondents

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CASE #88-01123
AWARD

CASE SUMMARY

This claim was filed with N.A.S.D, Inc. on April 8th, 1989.

At the commencement of the hearing on June 12, 1990, on the record, Claimants' attorney made a motion that he be allowed to withdraw Claimants' claim against two of the named Respondents, Phillips Appel & Walden, Inc., and Muller & Company, Inc. without prejudice with regard to any future lawsuit, but with prejudice with regard to any future arbitration unless a court should direct otherwise. Respondents' attorney had no objection to Claimants' motion, and the Arbitration Panel granted the request and the arbitration hearing proceeded with Broadcort Capital Corporation as the sole Respondent.

Claimants, Sidney and Elaine Schnipper, Municipal Pension Protectors, Inc. and Municipal Plan Protectors, Inc., alleged that Respondent Broadcort Capital Corp. ("B.C.C.C.") was careless and negligent and violated its fiduciary duty toward claimants in failing to promptly and responsibly liquidate the securities in Claimants' five accounts when the equity in Claimants margin accounts fell below the required levels in October of 1987. Claimants also alleged that Broadcort Capital Corp. failed as clearing agent to adhere to ordinary margin rules and practices, and failed to adhere to their own written policies in informing Claimants that additional equity was needed in their margin accounts in October of 1987. Claimants further alleged unauthorized transfer and use of funds by Respondent Broadcort Capital Corp. from Claimant's Money Market Account.

Claimants maintained that by reason of Respondent's wrongful conduct the market value of the securities in Claimants' accounts when they were liquidated around October 21, 1987 was less than it would have been if respondent had not improperly delayed in making said liquidations.

Respondent, Broadcort Capital Corp. maintained that it was merely acting as clearing broker for Claimants' accounts and that Claimants' contract with B.C.C.C. gave B.C.C.C. the absolute right to take orders from an introducing firm and are not responsible for any damages suffered by Claimants as a result of any such orders. Respondent B.C.C.C. further maintained that the transfer

of funds from Claimants's Money Market Account was not done by B.C.C.C., but by someone at Phillips Appel and Walden, Inc. Additionally, Respondent B.C.C.C. asserted a Counterclaim against Claimants.

RELIEF REQUESTED

Claimants, requested an Award against Respondent in the amount of \$254,292.12 together with all costs and expenses, including attorney's fees, incurred in connection with this arbitration.

Respondent B.C.C.C. requested a Counterclaim in it's favor in the amount of \$10,000.00 jointly and severally against Claimants and that all claims against it be dismissed.

AWARD

On June 12th, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on April 1st, 1989 and by Respondent on October 3, 1989. The hearing was held in New York City, New York and consisted of two sessions. 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. That the claims of the Claimants are hereby dismissed in all respects.
2. That the Counterclaim of the Respondent, Broadcast Capital Corp., against the Claimants is hereby dismissed in its entirety.
3. The parties shall each bear their respective costs including attorney's fees.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant as costs of the first hearing session conducted on June 12, 1990.
5. Respondent is assessed forum fees in the amount of \$750.00 to be paid to the National Association of Securities Dealers, Inc. in accordance with Section 43 of the Code of Arbitration Procedure as costs of the second hearing session conducted on June 12, 1990.

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ARBITRATORS CONCURRING

/s/
Murray I Sommer

/s/
Barry Feiden

/s/
Arnold Weinberg

Dated: July 25, 1990