

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )

LEO and NORMA SCHOR, )

Claimants, )

vs. )

BROWN AND HAWK, INC., KENNETH BROWN,  
RICHARD PETTERSEN and RICHARD HAWK, )

Respondents. )

) Case #88-01381  
) SECOND AMENDED  
) AWARD  
)  
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Heard before the members of the Arbitration Panel:

CASE SUMMARY

This Award has been amended pursuant to a stipulated agreement entered into between the parties. The changes reflected in this Second Amended Award were limited to the Relief Requested and Paragraphs (4) and (5) and more accurately reflect the relief requested from the Respondents. The amount of damages for which Respondents are liable and the liability of certain Respondents has been changed. This Second Amended Award shall not be construed as an assessment of additional damages to the Respondents, but reflects the agreement between the parties. This Second Amended Award supercedes the Amended Award dated August 25, 1989 and the Award dated June 20, 1989.

This claim was filed with the NASD, Inc., on April 29, 1988. The hearing was conducted in Fort Lauderdale, Florida with a total of three (3) sessions. Claimants, Leo and Norma Schor ("The Schors") alleged the Respondents Brown and Hawk, Inc. ("B & H"), Richard Hawk ("Hawk") and Richard C. Pettersen III ("Petterssen") in Count I violated Florida Statutes Sec. 317.301 and Sec. 317.211; in Count II breached their common law fiduciary duty; in Count III committed common law fraud; and in Count IV were negligent by failing to inform the Schors of the risk of trading securities, engaging in unsuitable securities transactions in the account, parking securities in the Schor's account and manipulating the value of certain securities purchased by the Schors. The Schors alleged in Count V that Respondents, B & H, Hawk and Kenneth Brown ("Brown") negligently supervised their employees. In their answer to Counts I-IV, B & H stated that the Schors were fully apprised of the risks of trading securities, that the investments were suitable and no securities were parked and there was no manipulation. In their answer to Count V, Respondents, B & H and Brown stated that Hawk and Petterssen were properly supervised at all times. Respondent, Petterssen stated in his answer to all of the Schors' allegations that they were fully advised of the risk of trading securities. Respondent, Hawk did not file any answer.

## RELIEF REQUESTED

Claimants Leo and Norma Schor requested damages of Thirty Seven Thousand Two Hundred Twenty Two and 93/100 (\$37,222.93) Dollars plus interest, punitive damages and other costs. Respondents, B & H. Brown and Petterssen requested dismissal of the claim and other costs.

## AWARD

On May 23, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on April 20, 1988 and by Respondents, Brown and Hawk, Inc. ("B&H") and Kenneth Brown ("Brown") on September 20, 1988; and not signed by Respondents, Richard Petterssen ("Petterssen" or Richard Hawk ("Hawk")), as required pursuant to Section 12(a) of the NASD, Inc. Code of Arbitration Procedure ("Code"), Respondents, Hawk and Petterssen being persons associated with a NASD member firm, B&H, during the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing, and Petterssen and Hawk neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding their knowledge of this arbitration as evidenced by Petterssen's Answer (letter to Deborah Masucci dated June 28, 1988) and the notices evidenced in Arbitrator's Exhibit #2(a) through 2(k), this arbitration panel 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. Jurisdiction exists pursuant to Sections 12 and 13 of the Code.
3. Although the reasons are set forth in the record of proceedings for finding of adequate notice to Respondents Hawk and Petterssen, the reasons will again be set forth here. The NASD, Inc. has made every attempt to locate and serve Respondents Hawk and Petterssen with Notice of this hearing as demonstrated by the following record evidence:
  - a) May 31, 1988, Service of Claim on Hawk at 21301 Powerline Road, Suite 211-A, Boca Raton, FL 33433. Return receipt was signed on June 15, 1988 (as evidenced in Arbitrator's Exhibit #2(a)).
  - b) May 31, 1988, Service of Claim on Petterssen at 3111 N. Ocean Dr., #1105, Hollywood, FL 33019. (While no receipt was returned to the NASD, Inc., neither was this mail ever returned as unclaimed as evidenced in Arbitrator's Exhibit #2(b).)
  - c) July 13, 1988, Service of "Overdue Answer" Notice on Hawk at the Boca Raton address. (While no receipt was returned to the NASD, Inc., neither was this mail ever returned as unclaimed as evidenced in Arbitrator's Exhibit #2(c).)

- d) August 17, 1988. Service of Statement of Reply on Petterssen at his Hollywood, FL address and on Hawk at the Boca Raton address (this mail was never returned as unclaimed as evidenced in Arbitrator's Exhibit #2(d)).
  - e) December 7, 1988. Confirmation Memo setting forth the date of the hearing sent to Petterssen at his Hollywood, FL address. Return receipt was signed December 9, 1988 (as evidenced by Arbitrator's Exhibit #2(e)).
  - f) December 7, 1988. Confirmation Memo setting forth the date of the hearing sent to Hawk at 69 N. Duke Street, Millersville, PA 17551. Return receipt was signed December 19, 1988 (as evidenced by Arbitrator's Exhibit #2(f)).
  - g) December 21, 1988. Confirmation Memo rescheduling the hearing and setting forth the new date for the hearing sent to Hawk. Return receipt was signed December 24, 1988 (as evidenced by Arbitrator's Exhibit #2(g)).
  - h) December 21, 1988. Confirmation Memo rescheduling the hearing and setting forth the new date for the hearing sent to Petterssen. Return receipt was signed January 3, 1989 (as evidenced by Arbitrator's Exhibit #2(h)).
  - i) April 17, 1989. Case Packet including hearing advance sheet setting forth date, time and location of the hearing sent to Petterssen at his Hollywood, FL address. Return receipt signed April 18, 1989 (as evidenced by Arbitrator's Exhibit #2(i)).
  - j) April 17, 1989. Case Packet including hearing advance sheet setting forth date, time and location of the hearing sent to Hawk at his Millersville, PA address. Return receipt signed April 21, 1989.
  - k) May 22, 1989. Hawk telephoned the NASD Staff Attorney Alan J. Foxman and informed him that he could not afford to fly down to Florida and requested permission to testify by phone. After contacting the arbitrators and obtaining their approval, Mr. Foxman phoned Respondent Hawk and informed him that he could testify by phone and that he would be responsible for the cost incurred thereby. Also, Hawk was again informed of the time and date of the hearing (evidenced by Arbitrator's Exhibit #2(k)).
4. Respondents, Richard Hawk and Brown and Hawk, Inc. shall be and hereby are liable, jointly and severally, and shall pay to the Claimants the amount of Five Thousand and 00/100 (\$5,000.00) Dollars.
5. Respondent, Brown & Hawk, Inc. shall be and hereby is liable for negligently supervising Respondent Hawk and Petterssen and shall pay to the Claimants the amount of Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars. The charges against Respondent, Ken Brown for negligent supervision are dismissed.

6. Respondent, Richard Petterssen shall be and hereby is liable and shall pay to the Claimants the amount of Two Thousand and 00/100 (\$2,000.00) Dollars.
7. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed Respondent, Kenneth Brown forum fees in the amount of One Thousand Two Hundred and 00/100 (\$1,200.00) Dollars, (\$400 x 3 sessions), Four Hundred and 00/100 (\$400.00) Dollars of which he shall pay directly to the Claimants and the remaining Eight Hundred and 00/100 (\$800.00) Dollars to be paid to the NASD, Inc. The NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimants.
8. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorneys' fees.

#### OTHER ISSUES

NONE

#### ARBITRATORS CONCURRING

Alan M. Grunspan, Esq.  
Judy Avey  
Terrence W. Grant

DATED: August 25, 1989