

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Western Employers, Inc.	Claimant(s)	AWARD
vs.		CASE #88-01944
Jefferies & Company and Warren Nadel	Respondent(s)	

SUMMARY OF ISSUES

This case was filed June 21, 1988. Claimant alleged that in connection with placing Claimant in a "Preferred Stock Dividend Capture Program" or "Dividend Roll Program" and purchase of options on commodity futures contracts, Respondents committed 1) fraud in the inducement under the Commodity Exchange Act, 2) violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, 3) negligent misrepresentation, 4) fraud in the operation and maintenance of claimant's accounts, 5) violations of the Racketeer Influenced and Corrupt Organizations Act, 6) negligence, 7) common law fraud, 8) breach of fiduciary duty, 9) breach of contract, and 10) violation of California Code Section 25401. Claimant alleged that as a result of Respondent's actions Claimant lost in excess of \$3 million.

Respondent Jefferies and Company asserted that Claimant was kept informed at all times of the securities and options which were being purchased for its account, that Claimant failed to mitigate its damages in that it failed to terminate its participation in the Preferred Stock Corporate Investment Strategy, that Claimant was contributorily negligent, any damages Claimant suffered were not caused by Jefferies or as a result of Claimant's participation in the Preferred Stock Corporate Investment Strategy, the alleged damages are overstated, Claimant ratified all transactions effected in its account, Claimant assumed any and all risks, Claimant is estopped from claiming damages against Jefferies, Jefferies made all disclosures required on its part to be made, and Claimant has failed to state a claim for violation of the Racketeer Influenced and Corrupt Organizations Act.

Respondent Warren Nadel responded to the Statement of Claim by incorporating by reference and adopting in its entirety the response of Jefferies and Company.

DAMAGES AND RELIEF REQUESTED

On each of its claims except the last, Claimant requested an award of \$3,058,720.85, plus interest from February 25, 1988 and the costs and

disbursements of this action. On its tenth claim, Claimant demanded an award of damages in the amount of \$3,997,175 plus interest at the rate of 10% per annum on \$20,000,000 from June 1, 1988. In addition, on its fifth claim, except as to Respondent Nadel, Claimant asked for treble damages and attorneys fees; and on its seventh claim, Claimant asked for punitive damages in an amount in excess of \$10,000. Claimant also asked for attorneys fees as determined by the panel and such other relief as the panel deems appropriate.

#### DAMAGES AND RELIEF AWARDED

On September 6, 7, 8, October 11, 12 & 13, 1989 in Los Angeles, California the undersigned arbitrators heard the controversy in fourteen sessions between the parties as set forth in submissions to arbitration signed by Claimant on June 10, 1988, and by Respondent Jefferies and Company on August 26, 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. Each and every claim of Claimants against Respondent Jefferies and Co. is dismissed.
2. Each and every claim of Claimant against Respondent Warren Nadel is dismissed.
3. The parties shall each bear their respective costs including attorneys' fees.
4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc ("NASD") Code of Arbitration Procedure: a) the NASD shall retain the \$1000.00 filing fee previously deposited by the Claimant, b) Claimant is assessed forum fees in the amount of Thirteen Thousand Dollars (\$13,000.00) to be paid directly to the National Association of Securities Dealers, Inc.

ARBITRATORS CONCURRING

DATE SERVED: December 12, 1989