

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Robert N. and Ella S. Ristad Foundation Claimant
et al.

VS.

Drexel Burnham Lambert, Inc. & Respondents
Donald Zepp

Case #88-01990

Award

CASE SUMMARY

This case was filed on June 20, 1988. Claimants made the following claims: Violation of Securities Exchange Act of 1934 Section 10(b) and Rule 10(b)5 of the United States Securities and Exchange Commission (SEC) promulgated thereunder; Breaches of Fiduciary Duty; Fraud; Negligent Misrepresentation; and Violation of California Corporations Code Sections 25400 and 25401. Respondents denied each and every allegation of liability and denied responsibility to Claimants for damages in any amount.

RELIEF REQUESTED

Claimants requested damages as follows:

1. On all claims for compensatory damages resulting in overpayment of Federal and State Taxes on account of capital gains in amounts according to proof.
2. On all claims for compensatory damages. including but not limited to commissions and mark-ups arising from the purchases and sales made, in a sum in excess of \$950,000.00.
3. On the first, second, third and fifth claims for punitive damages in amounts to be determined by the panel of arbitrators.
4. For costs of filing and pursuing these claims.
5. For interest as determined by law.
6. For such other and further relief as the panel of arbitrators may deem just and proper.

AWARD

On March 1st and 2nd and May 11th and 12th, 1989, in San Francisco, CA, the undersigned arbitrators heard the controversy, in nine sessions, between the parties as set forth in submissions to arbitration signed by Claimants Robert N. Ristad, a.k.a. Robert N. Ristad, Sr., individually and as trustee for u/w Ella Ristad Trust A and u/w Ella Ristad Trust B and as Executor of the Estate of Ella S. Ristad, and as President of Robert N. and Ella S. Ristad Foundation on March 14, 1988 and Robert N. Ristad, Jr., individually and as trustee for u/w Ella Ristad Trust A and u/w Ella Ristad Trust B, and as Treasurer of Robert N. and Ella S. Ristad Foundation on March 4, 1988, and by Respondents Drexel Burnham Lambert, Inc. on September 27, 1988 and Donald Zepp on October 3, 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 claim for overpayment of Federal and State taxes on account of capital gain in amounts according to proof is dismissed.

2. Respondents are jointly and severally liable for and shall pay to Claimants the following on their claim for compensatory damages based on commissions and markups:

- A) the sum of \$409,917.00 to Claimant Ella Ristad Trust A;
- B) the sum of \$311,388.00 to Claimant Ella Ristad Trust B;
- C) the sum of \$80,705.00 to Claimant Robert N. and Ella S. Ristad Foundation; and
- D) the sum of \$315,706.00 to Claimant Robert N. Ristad, Jr..

3. Respondents are jointly and severally liable for and shall pay to Claimants interest on the above-referenced awards as follows:

- A) the sum of \$138,799.00 to Claimant Ella Ristad Trust A;
- B) the sum of \$104,736.00 to Claimant Ella Ristad Trust B;
- C) the sum of \$26,433.00 to Claimant Robert N. and Ella S. Ristad Foundation; and
- D) the sum of \$104,620.00 to Claimant Robert N. Ristad, Jr..

4. The claim for punitive damages is dismissed.

5. The parties shall each bear their respective costs including attorneys' fees.

6. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators assess Respondents, jointly and severally, \$4,000.00 in forum fees to be paid as follows:P

A) Respondents are jointly and severally liable for and shall pay to Claimants \$1,000.00 in reimbursement for the initial deposit paid as a filing fee; and

B) Respondents are jointly and severally liable for and shall pay to the National Association of Securities Dealers, Inc. \$3,000.00 in forum fees.

OTHER ISSUES

Not applicable.

ARBITRATORS CONCURRING

Margaret Kallman

Walter Hitchcock

ARBITRATORS DISSENTING

Rudy Thorwirth

San Francisco, CA

Date Served: July 14, 1939