

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
CONNIE MARINCHEK.)
)
) Claimant,)
) Case #88-02262
vs.) Award
)
)
KASHNER SECURITIES CORP., MARTIN R. KENEALY)
)
and JOHN H. JETT,)
) Respondents,)
)

Heard before the members of the Arbitration Panel:

Mr. Roger C. Benson
Marvin M. Morgenstern, Esq.
Ms. Allison Hardage

CASE SUMMARY

This claim was filed with the NASD, Inc. on July 15, 1988. The hearing was conducted in Tampa, Florida on October 26th and 27th, 1989 with a total of four (4) sessions.

Claimant Connie Marinchek ("Marinchek") alleged that Respondents Kashner Securities Corporation ("Kashner"), Martin Kenealy ("Kenealy") and John Jett ("Jett") were liable for placing Claimant in unsuitable investments and churning. Specifically, Claimant alleged that Respondent Kenealy fraudulently induced Marinchek into purchasing options, which investments were unsuitable in light of Claimant's stated investment objectives, and that the number of trades in Claimant's account were clearly excessive and was an indication that churning had taken place. Respondents alleged that Claimant disregarded Respondents' recommendations; maintained complete control over the account; was a sophisticated investor in options trading; the investments were suitable; and, the account was not churned. Additionally, Respondent Kashner asserted a counterclaim alleging a debit balance owed in Claimant's account.

RELIEF REQUESTED

Claimant requested damages in the amount of \$107,765.89 plus punitive damages, treble damages, attorney's fees and other costs. Respondents requested dismissal of the claim, attorney's fees and other costs. In addition, Respondent Kashner asserted a counterclaim requesting damages of \$10,500.00.

AWARD

On October 26th and 27th, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on June 17, 1988, and by Respondent Kashner on October 31, 1988, Nick Roknich III as attorney for Respondents Kenealy and Jett on October 31, 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 Kashner, Kenealy and Jett are not liable and, therefore, all claims against them are hereby dismissed.
3. Claimant/Counter Respondent Marinchek is not liable and, therefore, all counterclaims against her are hereby dismissed.
4. Claimant's request for attorney's fees is hereby dismissed in all respects.
5. Respondents' request for attorney's fees is hereby dismissed in all respects.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars (\$750.00 x 4 sessions). Claimant is hereby assessed forum fees in the amount of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars. The NASD, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant as partial satisfaction of such forum fees. Respondents are hereby assessed forum fees in the amount of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars for which they shall be jointly and severally liable.
7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATOR CONCURRING
Mr. Roger C. Benson, Marvin M. Morgenstern Esq. and Ms. Allison Hardage.

Dated: December 4, 1989