

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Edward Muniz

Claimant

vs.

First Affiliated Securities,
Inc., William Morgan and Akiva
Bar

Respondents

AWARD

CASE NO. 88-02960

SUMMARY OF ISSUES

Claimant alleged Respondents: 1. breached their fiduciary duty to him by buying unsuitable common stocks for his portfolio and engaging in unsuitable options trading; 2. churned his account to generate excessive commissions; 3. fraudulently invested Claimant in the Equitable Acceptance Realty Trust 11 days after the offering had closed; 4. misrepresented the financial condition and suitability for Claimant of the realty trust; 5. engaged in a pattern of conduct not in conformity with NASD and NYSE rules which was designed to defraud Claimant; and 6. were negligent in the hiring and supervision of Respondent Akiva Bar.

Respondents denied the allegations brought by Claimant, asserting that: 1. Claimant failed to support his unsuitability claim with specific facts and that this claim is contradicted by his pattern of investing with other brokerage firms; 2. Claimant was fully informed of the risks of all investments; and 3. Claimant ratified all trades. Respondents further assert that Claimant was an experienced investor who followed Respondent Akiva Bar from another broker dealer to First Affiliated Securities because of his desire to continue to do business with Mr. Bar.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages of \$89,469.00 plus interest for stock and options losses, \$50,000.00 for the loss of his investment in the realty trust, and punitive damages of \$100,000.00. At the hearing, Claimant revised his damages calculation to \$71,000.00 plus interest for stock losses, \$50,000.00 for the realty trust loss, and punitive damages of \$300,000.00 against First Affiliated Securities, Inc. and \$100,000.00 against William Morgan.

Respondents requested dismissal of all claims and an award of their costs of arbitration.

PROCEDURAL SUMMARY

This claim was filed with the NASD on September 20, 1988. On March 7 and 26, 1990, the undersigned arbitrators heard the controversy between the parties pursuant to the submission to arbitration executed by Muniz on November 28, 1988, by First Affiliated Securities, Inc. on February 14, 1989, and by William Morgan on April 7, 1989. The hearing was held in three sessions in San Francisco, California.

Respondent Akiva Bar did not file a submission agreement or answer to the statement of claim; he subsequently filed for protection under the bankruptcy laws and further action against him in this matter was stayed.

DAMAGES AND RELIEF AWARDED

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. Respondent First Affiliated Securities, Inc. is solely liable for and shall pay to Claimant the sum of Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) with respect to his claim for losses on the realty trust investment.

2. Respondents First Affiliated Securities, Inc. and William Morgan are jointly and severally liable for and shall pay to Claimant the sum of Seventy-One Thousand, Seven Hundred Forty Dollars and Zero Cents (\$71,740.00) with respect to his stock losses.

3. The claim for punitive damages is dismissed.


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

5. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators. Forum fees are also assessed against First Affiliated Securities, Inc. and William Morgan in the amount of \$750.00 each; these

sums should be made payable to the National Association of Securities Dealers, Inc. through its staff representative.

PRESIDING ARBITRATORS

DATE SERVED: 04/11/90



John P. Wilson

