

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Leonora Resnick

CASE #88-03097

Name of Respondent(s)

Margaretten Financial Group
Ellen Margaretten
Huberman Securities Corp.
Michelin & Company, Inc.
Paul E. Michelin

In the Matter of the Arbitration Between

Name of Claimant(s)

Ruth Rosen

CASE #88-03835

Name of Respondent(s)

Ellen Margaretten
Margaretten Financial Group
Huberman Securities Corporation
Michelin and Co., Inc.
Paul Michelin

Heard before the members of the Arbitration Panel:

Louise T. Jeroslow, Esq.
Eduardo J. Palacio, Esq.
George L. Davis

CASE SUMMARY

These claims were filed with the NASD, Inc. on October 4, 1988 and December 19, 1988. The hearing was conducted in Fort Lauderdale, Florida on July 12, 1990, October 4, 1990 and October 5, 1990, with a total of four (4) sessions.

Claimants, Ruth Rosen ("Rosen"), and Leonora Resnick ("Resnick"), alleged that Respondents, Ellen Margaretten ("Margaretten"), Huberman Securities Corporation ("HSC"), f/k/a Huberman, Margaretten and Strauss, Paul E. Michelin ("Michelin"), and Michelin and Co., Inc. ("MCI"), were liable for: negligence; breach of contract; breach of fiduciary duty; common law fraud; violations of Florida Statute Section 517.307; violations of Section 10(b) of the Securities and Exchange Act of 1934; violations of 15 U.S.C. Section 78j(b) and rule 10(b)-5; unsuitability; violations of Florida Statute Section 812.035(7); violations of the Florida and Federal RICO Act; and violations of Florida Statute Chapter 772.

Claimants alleged that they were placed into speculative and risky limited partnerships in contravention of their stated investment objectives.

Respondent, Margaretten, alleged that: she made no recommendations to Claimants; Margaretten was not informed of Claimants' desire for low risk investments; Margaretten was not involved in supervising Michelin; Claimants did not rely on any representations of Margaretten; Margaretten did not solicit purchases from Claimants; and Margaretten had no intent to defraud or commit theft.

Respondent, HSC, alleged that Claimants were informed of the risks and asserted the affirmative defenses of: good faith; failure to state a claim; lack of knowledge; compliance with all applicable rules and regulations; lack of proximate cause; waiver; estoppel; laches; negligence; intervening acts; lack of damages; and no private right of action for violations of NASD Rules.

Respondent, Margaretten Financial Group was dismissed, with prejudice, from the arbitration by Claimants.

RELIEF REQUESTED

Claimant, Rosen, requested damages from Margaretten, HSC, and Michelin, in the amount of \$26,000.00 plus attorney's fees, costs, interest, punitive and treble damages, and requested damages from Michelin and MCI, in the amount of \$37,000.00 plus attorney's fees, costs, interest, punitive and treble damages.

Claimant, Resnick, requested damages from Margaretten, HSC, and Michelin, in the amount of \$71,000.00 plus interest, costs, attorney's fees, punitive and treble damages, and requested damages from Michelin and MCI, in the amount of \$24,000.00 plus attorney's fees, costs, interest, punitive and treble damages.

Respondents, Margaretten and HSC, requested dismissal of the claims plus costs and attorney's fees.

Respondents, Michelin and MCI, requested dismissal of the claim.

AWARD

On July 12, 1990, October 4 and 5, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, Rosen and Resnick, on June 16, 1988, and by Respondents, Margaretten, on February 16, 1989, HSC, on January 19, 1987, Michelin and MCI, on July 12, 1990. 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. Respondent, MCI, is not liable to Claimants and, therefore, the claims against it are hereby dismissed in all respects.
3. Respondent, Margaretten, is liable and shall pay to Claimant, Resnick, the amount of Eight Thousand and 00/100 (\$8,000.00) Dollars inclusive of interest.
4. Respondent, HSC, is liable and shall pay to Claimant, Resnick, the amount of Eight Thousand and 00/100 (\$8,000.00) Dollars inclusive of interest.
5. Respondent, Michelin, is liable and shall pay to Claimant, Resnick, the amount of Thirty Six Thousand and 00/100 (\$36,000.00) Dollars inclusive of interest.
6. Respondent, Margaretten, is liable and shall pay to Claimant, Rosen, the amount of Four Thousand and 00/100 (\$4,000.00) Dollars inclusive of interest.
7. Respondent, HSC, is liable and shall pay to Claimant, Rosen, the amount of Four Thousand and 00/100 (\$4,000.00) Dollars inclusive of interest.
8. Respondent, Michelin, is liable and shall pay to Claimant, Rosen, the amount of Twenty Eight Thousand and 00/100 (\$28,000.00) Dollars inclusive of interest.
9. Claimants' request for costs, attorney's fees, punitive and treble damages is hereby dismissed in all respects.

10. Claimant, Resnick and Respondent, Margaretten Financial Group, Inc., are hereby assessed Fifty and 00/100 (\$50.00) Dollars each for the fee due for the postponement of the May 1 and May 2, 1990 hearing dates.
11. Pursuant to Section 43 of the NASD Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Four Thousand and 00/100 (\$4,000.00) Dollars, (One Thousand and 00/100 (\$1,000.00) Dollar filing fee based on the aggregate amount of the two claims x 4 sessions). Claimant, Resnick is hereby assessed forum fees in the amount of One Thousand and 00/100 (\$1,000.00) Dollars. The National Association of Securities Dealers shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by Resnick in partial satisfaction of such forum fees. Claimant, Rosen, is hereby assessed forum fees in the amount of One Thousand and 00/100 (\$1,000.00) Dollars. The NASD shall retain the Five Hundred and 00/100 (\$500.00) Dollar filing fee previously deposited by Rosen in partial satisfaction of such forum fees. Respondent, HSC, is hereby assessed forum fees in the amount of One Thousand and 00/100 (\$1,000.00) Dollars and Respondent, Michelin, is hereby assessed forum fees in the amount of One Thousand and 00/100 (\$1,000.00) Dollars.
12. The parties shall each bear all other costs and expenses incurred by them in connection with these proceedings including attorney's fees.

OTHER ISSUES

Nons.

ARBITRATORS CONCURRING

15/
Louise T. Jerslow, Esq.

15/
Eduardo J. Palacio, Esq.

15/
George L. Davis

Dated: November 2, 1990