

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

HAROLD & MAXINE BROWN

Claimants

and

B.C. CHRISTOPHER SECURITIES, CO.,
BLUNT, ELLIS & LOEWI, INC.,
WILLIAM ROSENBERGER, et al

Respondent

CASE NO. 88-03227

CASE SUMMARY

A. Harold and Maxine Brown ("Claimants") alleged as follows:

(B.C. Christopher Securities, Co., Blunt, Ellis & Loewi, Inc., William Rosenberger, Roger Wilkie, Richard Garton, Douglas Black, and Richard McCarthy are collectively referred to herein as "Respondents")

1. In April and May 1986, William Rosenberger ("Rosenberger") then a registered representative of Blunt Ellis and Loewi, Inc. ("Blunt Ellis") made unauthorized transfers of shares of TCBY and Certified Collateral Corporation ("the stocks") into the Claimants' account;
2. Claimants complained to Rosenberger and Roger Wilkie ("Wilkie") the manager of Blunt Ellis about the unauthorized stock, and Wilkie subsequently told the Claimants that the stock would be removed from their account;
3. Shortly after the unauthorized trades, Rosenberger went to work for B.C. Christopher ("Christopher") and the Claimants account was transferred to Christopher;
4. Claimants notified Richard Garton ("Garton"), Douglas Black ("Black"), and Richard McCarthy ("McCarthy"), persons in management at Christopher, of the unauthorized shares. Garton, Black, and McCarthy assured the Claimants that the stocks would be removed from the account;
5. Rosenberger assured the Claimants that he would hold them harmless from any loss on the shares in question;
6. The Respondents wrongfully exercised dominion and control over the Browns' property to wit: their funds, interest, and income, and such control interfered with the Claimants' rights with regard to such property;
7. Respondents improperly charged margin interest to the Claimants' account;

8. The other Respondents failed to properly supervise Rosenberger;

9. Respondents a) violated Section 10(b) of the 1934 Securities and Exchange Act and Rule 10b-5 promulgated thereunder and the Kansas Securities Act, b) engaged in common law fraud, and c) converted the Claimants' property;

10. Rosenberger, Wilkie, Garton, Christopher, and Blunt, Ellis and Loewi breached their contract with the Claimants by failing to remove the stocks from their account; and

11. Rosenberger breached his promise to hold the Claimants harmless from any loss on the stocks.

B. Each of the Respondents denied every respective claim made against them and further alleged that the trades in question were authorized and/or ratified by the Claimants.

C. Christopher, Garton, McCarthy, and Black alleged:

1. That they are not responsible for any alleged unauthorized trades made at Blunt Ellis;

2. The Claimants ratified any alleged unauthorized trades when the Claimants approved the transfer of their account from Blunt Ellis to Christopher;

3. Neither Christopher or any of its representatives made any statements to the Browns in which they indicated to the Browns that Christopher would remove the stocks from the Browns account or that Christopher would reimburse the Claimants for any losses they sustained;

4. No alleged assurance made by Rosenberger to the Claimants is binding on Christopher or any of its representatives; and

5. Mr. Brown informed Mr. Pfaff, a compliance officer with Christopher, that everything was okay.

D. Blunt Ellis and Wilkie alleged that they were never informed by the Claimants of any alleged unauthorized transactions; nor was any assurance by Rosenberger binding on either of them.

E. Christopher alleged that the Claimants are indebted to it for the debit balance in their account.

F. Respondents alleged that the Claimants claims are barred by 1) the statute of limitations, 2) the comparative or contributory fault of the Claimants, 3) failure of the Claimants to mitigate their damages, 4) the doctrine of in pari delicto, and 5) failure of the Claimants to exercise reasonable diligence.

RELIEF REQUESTED

Claimant requested 1) actual damages of \$95,969.32, 2) compensation of \$200,000.00, 3) attorneys fees and costs of \$38,810.00 plus 15% of the actual amount awarded, 4) the refund of the \$500.00 filing fee, 5) punitive damages assessed in the following manner: Christopher and Blunt Ellis each pay \$250,000.00, Garton and Wilkie each pay \$150,000.00, and Black and McCarthy each pay \$50,000.00, 6) post award interest of 15% per annum, and 7) dismissal of Christopher's debit balance claim.

Respondents requested that all of the claims asserted be dismissed.

Christopher asserted damages against the Claimants in the amount of \$82,283.86.

AWARD

On October 18, 1988, the Claimants filed their Statement of Claim with the NASD. On February 12 and 13, 1990 and March 14 and 15, 1990, in ten (10) sessions in Kansas City, Missouri, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on October 11, 1988 by the Claimants, by Robert S. Oppold on behalf of B.C. Christopher Securities Company on December 13, 1988, on December 13, 1988 by Roger Wilkie and by Donald H. Zurliene, Jr. on behalf of Blunt, Ellis and Loewi, Incorporated, on March 10, 1989 by William M. Rosenberger, and on October 25, 1989 by Douglas Black and Richard J. McCarthy. Richard Garton affirmed on the record that he was submitting this controversy to arbitration in accordance with the rules, regulations, and procedures of the NASD.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. B.C. Christopher Securities Company and Blunt, Ellis and Loewi, Inc. shall be jointly and severally liable for and shall pay to Harold and Maxine Brown Forty Thousand Dollars and No Cents (\$40,000.00).

2. Harold and Maxine Brown shall be liable for and shall pay to B.C. Christopher Securities Company Eighty Two Thousand Two Hundred Eighty-Three Dollars and Eighty-Six Cents (\$82,283.86).

3. The parties shall bear their own attorneys' fees.

4. All of the claims asserted by Claimants against William Rosenberger, Douglas Black, Richard McCarthy, Richard Garton, and Roger Wilkie are hereby dismissed.

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$500.00 filing fee previously deposited with the NASD by the Claimant as forum fees and the Claimants shall pay an additional \$1,000.00 to the NASD as forum fees. B.C. Christopher Securities Company and Blunt, Ellis and Loewi, Inc. shall each pay \$1,500.00 to the NASD as forum fees.

By the Panel

Dated: 03/15/90 /S/ Daniel L. Fowler
Presiding Chair

Dated: 03/15/90 /S/ Arthur F. Dewsberry

Dated: 03/15/90 /S/ Christine Ekberg-Wilensky

DATE SERVED: 3/27/90