

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
MINNIE WEBER,)
Claimant,)
vs.) Case #88-03228
PROFILE INVESTMENTS, ALAN BESHANY and) Award
GREGORY MARHOLIN.)
Respondents.)

Heard before the members of the Arbitration Panel:

ARTHUR J. LEIBELL, ESQ.
MR. LAWRENCE M. GREEN
MR. HOWARD BIEL

CASE SUMMARY

This claim was filed with the NASD, Inc. on October 18, 1988. The hearing was conducted in Fort Lauderdale, Florida on February 26, 1990 with a total of 1 session.

Claimant Minnie Weber ("Weber") alleged that Respondents Profile Investments Corp. ("Profile") Alan Beshany ("Beshany") and Gregory Marholin ("Marholin") were liable for: violating Florida Statute Section 517.301; breach of fiduciary duty; fraud and deceit; and negligence. Additionally, Claimant alleged that Profile was liable for negligent supervision and Respondents Beshany and Marholin were not registered to sell securities in the State of Florida at all times relevant to this matter and sold unregistered stocks.

Respondents denied liability and alleged that: Claimant was made aware that Marholin would be effecting transactions on her behalf; Respondents did not act as investment advisors; Claimant was a knowledgeable investor; Profile did not authorize or use discretionary accounts; Respondents made no misrepresentations; and Respondent were not made aware of Claimant's income portfolio. Respondents did not appear at the hearing to defend.

RELIEF REQUESTED

Claimant requested unspecified damages, plus interest, punitive damages in the amount of \$100,000.00, attorney's fees pursuant to Florida Statute Section 517.21 and other costs. Respondents requested dismissal of the claim and other costs.

AWARD

On February 26, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on October 13, 1988, and by Respondents Profile, Beshany and Marholin on December 22, 1988. Having considered the pleadings, the testimony, and the evidence presented at the hearing, and Respondents Profile, Beshany and Marholin neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding their knowledge of this arbitration as evidenced by their Answer received January 4, 1989. The arbitration Panel has determined in full and final resolution of the issues submitted for determination as follows:

1. The Claimant has 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 Claimant has agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Jurisdiction exists pursuant to Sections 12 and 13 of the NASD Code of Arbitration Procedure ("Code") and the form U-4 executed by Respondents Beshany and Marholin.
3. Although the reasons are set forth in the record of proceedings for finding of adequate notice to Respondents Profile, Beshany and Marholin, the reasons will again be set forth here. The NASD, Inc. has made every attempt to locate and serve Respondents with Notice of this hearing as demonstrated by the following record evidence:
 - a). November 2, 1988, Service of Statement of Claim by Certified Mail on Profile c/o Robert Schlein, Esq. 9500 South Dadeland Blvd., Ste. 706, Miami, FL 33156 (while no return receipt was received by the NASD, neither was this mail ever returned as not delivered, evidenced by Arbitrators Exhibit #2(a)).
 - b). November 2, 1988, Service of Statement of Claim by Certified Mail on Gregory Marholin at Profile Investments at the Dadeland Blvd. address (while no return receipt was received by the NASD, neither was this mail ever returned as not delivered, evidenced by Arbitrators Exhibit #2(b)).
 - c). November 2, 1988, Service of Statement of Claim by Certified Mail on Alan Beshany at Profile Investments at the Dadeland Blvd. address (while no return receipt was received by the NASD, neither was this mail ever returned as not delivered, evidenced by Arbitrators Exhibit #2(c)).
 - d). January 9, 1989, Service of Overdue Answer Notice on Beshany at Profile Investments at the Dadeland Blvd. address by Certified Mail (while no return receipt was received by the NASD, neither was this mail ever returned as not delivered, evidenced by Arbitrators Exhibit #2(d)).

- e). January 9, 1989, Service of Overdue Answer Notice on Marholin at Profile Investments at the Dadeland Blvd. address by Certified Mail (while no return receipt was received by the NASD, neither was this mail ever returned as not delivered, evidenced by Arbitrators Exhibit #2(e)).
- f). January 9, 1989, Service of Overdue Answer Notice on Profile c/o Robert Schlein, Esq. at the Dadeland Blvd. address by Certified Mail (while no return receipt was received by the NASD, neither was this mail ever returned as not delivered, evidenced by Arbitrators Exhibit #2(f)).
- g). January 4, 1989, Statement of Answer for all Respondents received by the NASD along with executed submission agreements (evidenced by Arbitrators Exhibit #1).
- h). January 9, 1989, Memo indicating that the pleadings stage is now complete sent by regular mail to Beshany, Marholin and Profile c/o Robert Schlein, Esq. at the Dadeland Blvd. address (evidenced by Arbitrators Exhibits #2(g) and #2(h)).
- i). March 1, 1989, Confirmation memo setting forth the hearing date sent to Dale Bernstein, Esq. attorney for Respondents at P.O. Box 570368, Miami, FL 33257-0368 (return receipt was received showing delivery on March 9, 1989, evidenced by Arbitrators Exhibit #2(i)).
- j). March 29, 1989, Memo enclosing amendment to Statement of Claim sent by regular mail to Dale Bernstein at the Miami, FL address (evidenced by Arbitrators Exhibit #2(j)).
- k). April 13, 1989, Letter sent by Dale Bernstein withdrawing as counsel for the Respondents (evidenced by Arbitrators Exhibit #2(k)).
- l). April 13, 1989, Letter sent by Dale Bernstein answering the amendment to the Statement of Claim (evidenced by Arbitrators Exhibit #2(l)).
- m). June 1, 1989, Letter sent by Dale Bernstein indicating that he believed the law firm of Atlas. Pearlman and Trop was representing the Respondents (evidenced by Arbitrators Exhibit #2(m)).
- n). September 1, 1989, Hearing Advance Sheet sent to Jan Atlas, Esq. by Certified Mail at Atlas. Pearlman and Trop 700 S.E. 3rd Avenue, Suite 300, Ft. Lauderdale, FL 33316. Return receipt received showing delivery on September 5, 1989. Attached is a file note by NASD Staff Attorney Alan Foxman, indicating that he spoke with several attorneys at Atlas, Pearlman and

Trop who indicated that the firm at one time was representing Profile in another matter but was not representing any of the Respondents in this case (evidenced by Arbitrators Exhibit #2(n)).

- o). October 3, 1989, Memo enclosing Claimant's Motion to Compel sent to Alan Beshany by Federal Express at 6701 N.W. 18th Court, Suite 123, Plantation, FL 33313 (evidenced by Arbitrators Exhibit #2(o)).
- p). October 18, 1989, Memo enclosing Claimant's Motion to Compel resent to Alan Beshany by Federal Express at 6701 N.W. 18th Court, Suite 123, Plantation, FL 33313. (Federal Express never called to indicate any problem with delivery, evidenced by Arbitrators Exhibit #2(p)).
- q). October 4, 1989, Hearing Advance Sheet sent to Marholin by Federal Express at 23414 Boca Chica Circle, Boca Raton, FL 33433. (Federal Express never called to indicate any problem with delivery, evidenced by Arbitrators Exhibit #2(q)).
- r). October 10, 1989, Hearing Advance Sheet and arbitrator background information faxed to Beshany at (305) 791-6193 pursuant to his request (evidenced in Arbitrators Exhibit #2(r)).
- s). October 10, 1989, Letter received from Beshany requesting a postponement of the October 16, 1989 hearing date asserting challenges to the arbitrators and showing his address as 6701 N.W. 18th Court, Suite 123, Plantation, FL 33313 (evidenced in Arbitrators Exhibit #2(s)).
- t). October 11, 1989, Letter received from Leon Van Gelderen indicating that he was representing Marholin and requesting a postponement of the October 16, 1989 hearing date (evidenced in Arbitrators Exhibits #2(t) and #2(v)).
- u). October 11, 1989, File note indicating that NASD Staff Attorney spoke with a representative from Federal Express regarding a package sent to Profile. Federal Express indicated that Profile was out of business, no one was at the 6360 N.W. 5th Way, Suite 200, Ft. Lauderdale, FL 33309 address and there was no forwarding address (evidenced by Arbitrators Exhibit #2(u)).
- v). November 7, 1989, Memo sent by regular mail to Profile at the N.W. 5th Way, Ft. Lauderdale address rescheduling the hearing for February 26, 1990 (this mail was returned, marked moved left no forwarding address, evidenced in Arbitrators Exhibit #2(w)).
- w). November 7, 1989, Memo sent by regular mail to Beshany at 6701 N.W. 18th Court, Suite 123, Plantation, FL 33313, rescheduling the hearing for February 26, 1990 (this mail was returned, marked Attempted, Not Known, evidenced by Arbitrator Exhibit #2(x)).

- x). January 12, 1990. Memo sent by regular mail to all Respondents at the following addresses: Beshany 7421 N.W. 11th Place, Plantation, FL 33313; Marholin c/o Leon Van Gelderen, Esq. 2635 Century Parkway, Suite 110, Atlanta, Georgia 30345; Profile 6360 N.W. 5th Way, Suite 200, Ft. Lauderdale, FL 33309. This memo indicated that Arthur Leibell had replaced Alan Grunspan as Chairman of the arbitration panel and enclosed Mr. Leibell's background information, (the only letter that was returned was the one sent to Profile, marked Moved, Left No Address, Unable to Forward, evidenced in Arbitrators Exhibits #2(y) and #2(z)).
- y). February 14, 1990, Letter received from Leon Van Gelderen withdrawing as counsel for Marholin (evidenced in Arbitrators Exhibit #2(aa)).
4. Respondents Beshany, Profile and Marholin are hereby liable, jointly and severally, and shall pay to Claimant the amount of Eighteen Thousand Three Hundred Thirty Seven and 49/100 (\$18,337.49) Dollars.
5. Respondents Beshany, Profile and Marholin are hereby liable, jointly and severally, and shall pay to Claimant the further amount of Four Thousand and 00/100 (\$4,000.00) Dollars as attorney's fees pursuant to Section 517.211 of the Florida Statutes.
6. Respondents Beshany, Profile and Marholin are hereby liable, jointly and severally, and shall pay to Claimant the further amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars as punitive damages.
7. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed Respondents Beshany, Profile and Marholin forum fees in the amount of Five Hundred and 00/100 (\$500.00) Dollars payable directly to the NASD, Inc. and for which the Respondents shall be jointly and severally liable. The NASD, Inc. shall refund the Five Hundred and 00/100 (\$500.00) Dollar filing fee previously deposited by the Claimant.
8. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Arthur J. Leibell, Esq.
Mr. Lawrence M. Green
Mr. Howard Biel

Dated: March 16, 1990