

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
PHYLLIS A. MAHER,)
) Claimant,)
) Case #88-03941
vs.) Award
)
F. N. WOLF & CO., INC.,)
SHARON L. JOHNSON, FRANKLIN WOLF.)
ROCHELLE WOHL.)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Leonard H. Davidson, Esq.
Ms. Judy Avey
Mr. Terrence W. Grant

CASE SUMMARY

This claim was filed with the NASD, Inc. on December 27, 1988. The hearing was conducted in Fort Lauderdale, Florida on June 8, 1990 with a total of two (2) hearing sessions and one prehearing conference session.

Claimant, Phyllis Maher ("Maher"), alleged that Respondents, F.N. Wolf & Co., Inc. ("Wolf & Co."), and Sharon Johnson ("Johnson"), were liable for: fraud and deceit; breach of fiduciary duties; negligence; and violations of federal and Florida Securities Laws; and that Respondents, Wolf & Co., Franklin Wolf ("Wolf") and Rochelle Wohl ("Wohl") were liable for negligent supervision.

Specifically, Claimant alleged that: Johnson placed her in speculative and unsuitable stocks in contravention of Claimant's stated investment objectives; induced Claimant into selling certain warrants when Claimant wanted to; and traded the account on margin without Claimant's approval.

Respondents, Wolf, Wohl, and Wolf & Co., alleged that: the allegation relating to the warrants fails to state a claim for relief; and the margin transaction was an unsolicited trade. Wolf, Wohl and Wolf & Co., asserted the affirmative defenses of: ratification; estoppel; failure to mitigate damages; and the losses were due to Claimant's own investment decisions. Respondents, Wolf, Wohl, and Wolf & Co., asserted a cross-claim against Johnson for indemnification or contribution.

Respondent, Johnson, failed to file an answer and did not appear at the hearing to defend.

RELIEF REQUESTED

Claimant requested damages in excess of \$30,000.00 plus punitive damages in the amount of \$20,000.00 plus costs and attorney's fees. Respondents, Wolf & Co., Wohl and Wolf, requested dismissal of the claim plus costs and cross-claimed against Johnson for indemnification or contribution. Respondent, Johnson, failed to file an answer.

AWARD

On June 8, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on November 14, 1989, and by Respondents, Wolf & Co., on March 27, 1989, Wolf on March 20, 1990, Wohl on March 19, 1990, and not signed by Respondent, Johnson, as required pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code"). Respondent, Johnson, being a person associated with an NASD member firm, F.N. Wolf & Co., Inc., at the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing and Respondent, Johnson, neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding her knowledge of this arbitration as evidenced in the record of proceedings, the arbitration panel has determined in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondents, Wolf & Co., Wolf and Wohl, 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, these parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondents, Wolf & Co., and Johnson, are hereby liable, jointly and severally, and shall pay to Claimant the amount of Seven Thousand Five Hundred Eighty Three and 71/100 (\$7,583.71) Dollars.
3. Respondents, Wolf and Wohl, are not liable and therefore, the claims against them are hereby dismissed.
4. Respondent, Johnson, is not liable to Respondent, Wolf & Co., and therefore, the crossclaim against her is hereby dismissed.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of One Thousand Two Hundred and 00/100 (\$1,200.00) Dollars (\$400 x 3 sessions; 2 hearing sessions and 1 prehearing conference session). Respondents, Wolf & Co. and Johnson, are hereby assessed forum fees in the amount of Eight Hundred and 00/100 (\$800.00) Dollars, for which they shall be jointly and severally liable, of which Four Hundred and 00/100 (\$400.00) Dollars shall be paid directly to the

Claimant as a return of her filing fee and Four Hundred and 00/100 (\$400.00) Dollars shall be paid to the NASD, Inc. Respondent, Wolf & Co., is hereby assessed the further amount of Four Hundred and 00/100 (\$400.00) Dollars for the prehearing conference. The NASD, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant.

6. Further, Respondent, Wolf & Co., will be credited One Hundred and 00/100 (\$100.00) Dollars for the postponement request which was denied.
7. The parties shall each bear all other costs and expenses incurred by them inconnection with this proceeding, including attorney's fees.

OTHER ISSUES

1. Jurisdiction exists pursuant to Section 12 and 13 of the Code and pursuant to the form U-4 executed by Respondent, Johnson.
2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this Panel finds service upon and adequate notice to Respondent, Johnson. The NASD has made every attempt to locate and serve Respondent, Johnson, with Notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

ARBITRATORS CONCURRING

Leonard H. Davidson, Esq.
Ms. Judy Avey
Mr. Terrence W. Grant

Dated: June 25, 1990