

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
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JEROME and SANDRA LIEBERMAN, )  
 )  
 ) Claimants, )  
 ) Case #89-00243  
vs. ) Award  
 )  
SHOCHET SECURITIES, INC., )  
 )  
 ) Respondent. )  
 )  
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Heard before the members of the Arbitration Panel:

Allan M. Lerner, Esq.  
Mrs. Camille Besold  
Mr. Terrence W. Grant

CASE SUMMARY

This claim was filed with the NASD, Inc. on January 26, 1989. The hearing was conducted in Fort Lauderdale, Florida on October 2, 3 and 5, 1989, with a total of five sessions.

Claimants, Jerome and Sandra Lieberman ("Liebermans") alleged that Shochet Securities, Inc. ("Shochet") breached the margin account agreement and prior course of dealing between the parties by prematurely liquidating stock positions in the account, without giving the Liebermans the opportunity to meet the margin calls; that Shochet breached a subsequent agreement to settle the initial dispute; and that Shochet's actions constituted conversion; breach of contract; fraud; breach of fiduciary duty; violations of the Rules of the NASD and the NYSE; and violation of Section 517.301, Florida Statutes. Shochet denied all allegations of wrongdoing; admitted that it attempted to resolve the dispute but that Claimants refused to perform. Respondent asserted the affirmative defenses of consent; assumption of risk; losses not caused by improper or unlawful conduct of Shochet; compliance with applicable regulations; failure to mitigate damages; ratification; lack of intent, scienter or recklessness; loss caused by intervening causes; waiver; contributory and comparative negligence; lack of reliance; due diligence; failure to state a cause of action; statute of limitations, laches; and that New York law does not provide for attorney's fees or punitive damages. Respondent counterclaimed and alleged that Claimants were liable for the margin debit in their account.

RELIEF REQUESTED

Claimants requested damages in the amount of Ninety Eight Thousand and 00/100 (\$98,000.00) Dollars; interest accruing from October 20, 1987; commissions; punitive damages; and attorney's fees; or, alternatively, Twenty Thousand and 00/100 (\$20,000.00) Dollars for breach of the settlement agreement, plus interest from October 23, 1987; punitive damages and attorney's fees. Respondent requested dismissal of claim; costs and damages in the amount of Two Hundred Twenty-Six and 00/100 (\$226.00) Dollars.

## AWARD

On October 2, 3 and 5, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on January 13, 1989, and by Respondent on February 21, 1989. 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, Shochet, shall be liable and shall pay to the Claimants the amount of Twenty Thousand and 00/100 (\$20,000.00) Dollars plus interest at the legal rate of 12% per annum accruing from November 10, 1987 to the date of this Award in the amount of Four Thousand Seven Hundred and 00/100 (\$4,700.00) Dollars, for a total of Twenty Four Thousand Seven Hundred and 00/100 (\$24,700.00) Dollars.
3. Respondent shall be liable and shall pay to Claimants the further amount of Two Thousand and 00/100 (\$2,000.00) Dollars for attorney's fees pursuant to Section 57.105, Florida Statutes.
4. Claimant/Counter Respondents, Liebermans, shall not be liable to the Respondent/Counter Claimant and, therefore, all counter claims against them are hereby dismissed.
5. Claimants' request for punitive damages is hereby dismissed in all respects.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Two Thousand Five Hundred and 00/100 (\$2,500.00) Dollars (five sessions x \$500.00). Claimants are assessed forum fees in the amount of One Thousand Two Hundred Fifty and 00/100 (\$1,250.00) Dollars and the Respondent is assessed forum fees in the amount of One Thousand Two Hundred Fifty and 00/100 (\$1,250.00) Dollars. The NASD, Inc. shall retain the Five Hundred and 00/100 (\$500.00) Dollar filing fee previously deposited by the Claimants with the NASD, Inc. in partial satisfaction of such forum fees.

7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Allan M. Lerner Esq., Camille Besold and Terrence W. Grant.

Dated this 10th day of October 1989.