

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)

LLOYD AND GAIL KAISER

Claimants

and

BLINDER, ROBINSON & CO., INC. AND
MARK BOYLE

Respondents

CASE NO. 89-00615

CASE SUMMARY

In a claim filed with the NASD on February 27, 1989, Claimants Lloyd and Gail Kaiser, ("Claimants") alleged that Respondents Blinder, Robinson and Co., Inc. and Mark Boyle (collectively as "Respondents") made material misrepresentations regarding common stock of Compensonics, the common stock of Equitex and the common stock of American Strategic Metals, Inc. Respondent Blinder, Robinson and Co. was a market maker for all three of the stocks purchased for the account of Claimants. Claimants further alleged that Respondent Mark Boyle made an unauthorized purchase of the Equitex stock. Claimants alleged fraud, breach of fiduciary duty, state and federal securities law violations, and negligence.

In its answer filed with the NASD on April 17, 1989, Respondent Blinder, Robinson & Co. denied the allegations of Claimant and denied any responsibility for the activities of Respondent Boyle.

Respondent Mark Boyle did not file an answer in this proceeding.

RELIEF REQUESTED

Claimants requested an award in the amount of \$55,000.00 plus interest, costs and attorneys fees Claimants further requested punitive damages in the amount of \$75,000.00. Respondent Blinder, Robinson & Co. requested that the Statement of Claim be dismissed in its entirety and that it be awarded its attorneys' fees incurred in this matter.

PROCEDURAL SUMMARY

A pre-hearing conference call was conducted on Tuesday, January 2, 1990 at the request of Claimant's counsel to compel production of certain documents. Prior to the commencement of the hearing of this matter, Respondent Blinder Robinson & Co., Inc. filed a challenge to the appointment of Arthur Dewsberry as an arbitrator in this matter. Respondent contended that this was a challenge for cause in that Mr. Dewsberry was not an attorney and there was not an attorney member of the panel. The NASD staff determined that this was not a challenge for cause but considered the challenge as peremptory. The peremptory challenge was denied since Respondent Blinder, Robinson & Co., Inc. had previously exercised its peremptory challenge pursuant to Section 22 of the NASD Code of Arbitration Procedure.

At the commencement of the hearing of this matter on Tuesday, January 9, 1990 Respondent Blinder Robinson & Co., Inc. reiterated its challenge of Mr. Dewsberry. The panel denied the challenge. Respondent Blinder, Robinson & Co., Inc. would not acknowledge acceptance of the composition of the panel for the record but the hearing proceeded.

On Wednesday, January 10, 1990, after presenting its first witness, Respondent Blinder, Robinson & Co., Inc. made a Motion to a Continuance citing an important appointment in Denver for later that evening. The panel denied the motion and instructed Blinder, Robinson & Co., Inc. to proceed with the presentation of this case. Blinder, Robinson objected to the decision of the panel and argued that the panel was prohibiting it from defending itself. It was acknowledged by the attorney that the appointment had been scheduled for at least two weeks prior to the commencement for the hearing and that he had not mentioned the potential conflict in any of his numerous motions for a continuance during the course of the hearing. The panel reiterated its decision to deny the motion for a postponement and instructed Blinder Robinson & Co., Inc. to proceed with its case. Respondent Blinder, Robinson & Co., Inc. then left the hearing.

After the departure of Respondent the panel concluded the hearing and granted the parties leave to file post hearing briefs within five (5) business days from the conclusion of the hearing. Respondent Blinder Robinson & Co., Inc. filed its legal memorandum with the NASD on January 17, 1990. Claimants' brief was also filed with the NASD on January 17, 1990.

AWARD

On Tuesday, January 9, 1990 and Wednesday, January 10, 1990 in Kansas City, Missouri during a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 7, 1989 by Claimants Lloyd and Gail Kaiser, on June 16, 1989 by Robert L. Lemon on behalf of Respondent Blinder Robinson & Co., Inc.

Respondent Mark Boyle did not execute a submission to arbitration. However, Respondent Mark Boyle was required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and is bound by the panel's final determination on all issues submitted.

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. Respondents Blinder, Robinson & Co., Inc. and Mark Boyle are jointly and severally liable for and shall pay to Claimant Lloyd and Gail Kaiser the sum of Forty Thousand Dollars and no cents (\$40,000.00);
2. Interest at the rate of 15% per annum is awarded on the above stated sum, from and inclusive of September 17, 1987 to and inclusive of the date this award is paid;
3. Respondents Blinder, Robinson & Co., Inc. and Mark Boyle are jointly and severally liable for and shall pay to Claimants Lloyd and Gail Kaiser the sum of Seventy Five Thousand Dollars and no cents (\$75,000.00) as punitive damages;
4. Respondents Blinder, Robinson & Co., Inc. and Mark Boyle are jointly and severally liable for and shall pay to Claimants Lloyd and Gail Kaiser the sum of Fourteen thousand Dollars and no cents (\$14,000.00) as attorneys fees;
5. Respondents Blinder, Robinson & Co., Inc. and Mark Boyle are jointly and severally liable for and shall pay to Claimants Lloyd and Gail Kaiser the sum of One Thousand Dollars and no cents (\$1,000.00) as reimbursement of expert witness fees;
6. Interest at the rate of 15% per annum is awarded on the awards of punitive damages, attorneys' fees and expert witness fees from and inclusive of April 1, 1990 to and inclusive of the date this award is paid;

7. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$750.00 filing fee \$500.00 of which has previously been deposited with the NASD by the Claimants. Claimants shall forward the \$250.00 balance of the filing fee. Respondent Blinder, Robinson & Co., Inc. is assessed and shall pay to the NASD as hearing costs the sum of \$3,750.00.

By the Panel

Dated: _____ /S/ _____
Michael William Gear
Presiding Chair

Dated: _____ /S/ _____
Arthur F. Dewsberry

Dated: Mar 5, 1990 /S/ James R. Gasal
James R. Gasal

7. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$750.00 filing fee \$500.00 of which has previously been deposited with the NASD by the Claimants. Claimants shall forward the \$250.00 balance of the filing fee. Respondent Blinder, Robinson & Co., Inc. is assessed and shall pay to the NASD as hearing costs the sum of \$3,750.00.

By the Panel

Dated: March 3, 1990

/S/ Michael William Gear
Michael William Gear
Presiding Chair

Dated: _____

/S/ _____
Arthur F. Dewsberry

Dated: _____

/S/ _____
James R. Gasal

7. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$750.00 filing fee \$500.00 of which has previously been deposited with the NASD by the Claimants. Claimants shall forward the \$250.00 balance of the filing fee. Respondent Blinder, Robinson & Co., Inc. is assessed and shall pay to the NASD as hearing costs the sum of \$3,750.00.

By the Panel

Dated: _____

/S/ _____
Michael William Gear
Presiding Chair

Dated: 3.3.90

/S/ Arthur F. Dewsberry
Arthur F. Dewsberry

Dated: _____

/S/ _____
James R. Gasal

6

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Respondents)

DISCIPLINARY REFERRAL

(On Tuesday, January 9, 1990 and Wednesday, January 10, 1990 in Kansas City, Missouri, during an arbitration hearing in the above-captioned matter, the undersigned arbitrators having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided to make a disciplinary referral to the appropriate District office of the NASD against Respondent Blinder, Robinson & Co., Inc. for its failure to comply with the Order of Production issued by the panel in the above-captioned matter.

By the Panel

Dated: _____

S/S

Michael William Gear
Presiding Chair

Dated: _____

S/S

Arthur F. Dewsberry

Dated: Jan 5 1990

S/S

James R. Gasal
James R. Gasal

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By the Panel

Dated: _____

S/S

Michael William Gear
Presiding Chair

Dated: 3.3.90

S/S


Arthur F. Dewsberry

Dated: _____

S/S

James R. Gasal

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By the Panel

Dated:

March 3, 1990

S/S

Michael William Dean

Michael William Gear
Presiding Chair

Dated:

S/S

Arthur F. Dewsberry

Dated:

S/S

James R. Gasal

Dated: March 8, 1990