

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	x
	x
John F. Horty and	x
Eric W. Springer, Trustees	x
Claimants	x
	x CASE NO.
vs.	x 89-01200
	x
	x ORDER
Seligman Marketing, Inc.	x
Respondent	x
	x

CASE SUMMARY

Claimants, John F. Horty and Eric W. Springer, Trustees of the Horty, Springer & Mattern, a professional corporation pension and profit sharing plans, ("Claimants"), alleged that the Respondent, Seligman Marketing, Inc. ("Respondent"), is liable for losses suffered by the Claimants as a result of the failure of the Respondent and/or its agent to liquidate the Claimants' investment in the Seligman Capital Fund, Inc. for more than two and one-half months after receiving the liquidation order from the Claimants.

Respondent made a Motion to Dismiss in which it contended the Statement of Claim, and its amendments, failed to state a claim upon which relief can be granted. Respondent contended that the Claimants cannot recover from the Respondent because no connection is alleged between the Claimants and the Respondent, and the Respondent is not alleged to have done anything wrong. The Claimants alleged that the apparent purpose of the Respondent was to act as the broker to effect the transfer of all Seligman Capital Fund interests, and that the Respondent failed to act in liquidating the Claimants' interest when requested.

RELIEF REQUESTED

Claimants requested actual damages of \$122,274.21, attorneys' fees and expenses in excess of \$10,000.00, plus that the Respondent's Motion to Dismiss be denied. Respondent

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Horty, Springer

requested dismissal of the Statement of Claim, and its amendments, in their entirety, plus costs and attorneys' fees.

ORDER

On July 10, 1990 the arbitrators conducted a prehearing telephone conference with the parties to this action for the purpose of hearing oral arguments with respect to the Respondent's Motion to Dismiss. On Friday July 13, 1990 the arbitrators reconvened in private for further deliberation of the Respondent's Motion to Dismiss. At the conclusion of this meeting, the arbitrators unanimously issued an order (attached as Exhibit A), which was forwarded to the parties. On October 5, 1990 the Arbitrators reconvened to resume discussion and consideration of the Respondent's Motion to Dismiss. The arbitration panel having considered the pleadings, and all the submissions presented, has determined in full and final resolution of the issues submitted for determination as follows:

1. See attached Exhibit B.

DAVID B. FARCETT
 DAVID J. KASTNER
 THOMAS D. KLEIN
 THOMAS J. STINE
 HERMAN C. KIMBLE
 FREDERICK OTTO
 CLAYTON A. SPURNEY
 HAROLD BENNETT CONNOR
 RICHARD S. DOUGLASS
 DANIEL F. STINE
 JAMES F. HANCOCK III
 M. L. CHANDLER
 EUGENE F. SCAMMON JR.
 CHARLES W. KENTON
 CHAS. EDWARD WATSON
 JAMES B. HILL
 PAUL W. EDWARDS JR.
 JAMES S. O. CHAIRMAN II
 STEWART M. FLAM
 STEWART W. EDWARDS III
 THOMAS P. FOSTER
 LAWRENCE J. HENSTON
 EDWARD E. V. GENT
 STEPHEN A. MURRAY
 DAVID L. MURRAY
 JAMES S. MCGILL
 ROBERT F. WATSON
 ROBERT W. HASTINGS
 ROBERT J. MALLINO
 STEPHEN W. MCGILL
 JAMES A. SCHWARTZ
 ARTHUR L. SCHWARTZ
 FRANK M. GARDNER
 ROBERT A. COLE JR.
 STEPHEN S. MEO
 JAMES S. MALLINO
 JAMES D. STADLER
 ROBERT M. MCGILL
 FRANK M. GARDNER
 JAMES T. WATSON
 RICHARD C. FOSTER
 CHRISTINA A. GARD
 STEPHEN C. KENT
 THOMAS M. FAIRLEY
 JAMES H. KENT
 THOMAS D. COLE JR.
 ROBERT O. MCGILL JR.
 JAMES F. OLSON
 EDWARD L. GARDNER JR.
 DOUGLAS A. DAVIS
 CHARLES W. EDWARDS
 EDWARD J. FOSTER
 JAMES C. COLE
 JAMES MCGILL SCHWARTZ
 HENRY E. WATSON
 L. JOHN ARBUTHNOT
 LU ANN GATSON
 DAVID J. GARDNER
 PATRICK T. STINE
 THOMAS H. MAY
 LILAND F. SCHWARTZ
 RAY F. MIDDLEMAN
 GREGORY MCGILL SCHWARTZ
 JAMES W. LITTON II
 ARTHUR J. WATSON
 GEORGE P. KACHULAK
 JOHN T. FOM
 HUNTER A. MCCOY JR.
 JESSE RABALA FOR III
 WILLIAM J. SPURNEY
 WILLIAM M. COLEMAN
 JAMES J. GARDNER
 JAMES F. GARDNER
 GREGORY A. GROSS
 JAMES L. LUTHER
 ARTHUR O. KIMBALL
 W. ALAN FOSTER JR.
 HOWARD A. CHANDLER
 MARCELLE M. THOMAS
 BRIAN T. MUST
 DAVID S. BROWN
 M. EUGENE MCGILL
 KENNETH S. KOWALSKI
 ALTON J. KENT
 J. JAMES ANDERSON
 JOHN C. CALLOS
 W. SCOTT CAMPBELL
 WILLIAM M. THOMSON
 PAUL S. MALLINO
 HENRY F. KUNSTMAN
 ARTHUR J. KENT
 JAMES A. GARDNER
 CHRISTOPHER PASADON JR.
 KIMBERLY D. ROBERTS
 OF COUNSEL
 J. LAWRENCE MCGILL

July 13, 1990

VIA TELECOPY

NATIONAL ASSOCIATION OF
 SECURITIES DEALERS, INC.
 Arbitration Division
 NASD Financial Center
 33 Whitehall Street
 New York, New York 10004

Attn: Leonard J. Amoruso, Esquire

RE: NASD Arbitration 89-01200
 John F. Harty and Erick W. Springer, Trustees
 v. Seligman Marketing, Inc.

Dear Mr. Amoruso:

On Friday, July 13, 1990, the Arbitrators reconvened in person for further deliberation of Respondent's Motion to Dismiss. Following that discussion the Panel unanimously agreed upon the following decision which we request that you forward to the litigants:

1. The Panel shall defer its decision upon Respondents' Motion to Dismiss;
2. Outstanding discovery shall be honored and any disputes concerning discovery are to be submitted for a decision without delay. The parties are reminded that the Panel will consider any unreasonable or bad faith conduct regarding discovery by either party as relevant to the issue of costs and attorneys' fees;


EXHIBIT A

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3. Both parties are hereby granted an additional 15 days from the date of this ruling to initiate further discovery. Any objections to newly initiated discovery must be raised within five calendar days of its receipt by the objecting party;
4. All discovery shall be completed within 60 days from the date of this ruling;
5. Any and all additional information to be submitted, other than testimony or documentary evidence to be presented at a hearing, shall be submitted no later than the 60th day following the date of this ruling. This paragraph shall not be interpreted to limit the parties to additional submission of information relating only to the Motion to Dismiss. To the contrary, any additional submissions, regarding any aspect of the claim or defense, must be submitted no later than 60 days following the date of this ruling;
6. It is the intention of the Panel that as soon as possible after the expiration of the 60 day period outlined above it shall reconvene in person or by conference call to further consider the Motion to Dismiss and issue its ruling thereon.

I hereby certify that the above is the ruling of the Arbitration Panel, unanimously, and that I have been authorized by the entire Panel to communicate this decision on its behalf.

Best regards,



Steven B. Latchuk
Chairman, NASD Arbitration Panel

SBL/fs

cc: Gary Lee Hogan
Frederich E. Liechti, Esq.

DAVID B. FARCETT
 DAVID J. ARMSTRONG
 EDWARD D. KATZ
 THEODORE U. STICK
 HERMAN D. A. MPEL
 ALBUE MCCOY OTTO
 LAYTON A. JENSEN
 HERBERT BENNETT LUNNER
 RICHARD D. DUFFAUN
 DANIEL P. STEPS
 JAMES F. MALONE III
 M. RICHARD DUNLAP
 EUGENE P. SWANLOW JR.
 CHARLES W. KENRICK
 JOHN EDWARD WALL
 JAMES R. MILLER
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 THOMAS P. LUTZ
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 TERRY H. MURPHY
 DAVID M. NEUMART
 GEORGE S. MCGRAW
 ROBERT F. KAGNER
 ROBERT W. HASTINGS
 ROBERT I. MARSH
 STEPHEN W. MCGURTON
 LARRY A. SILVERMAN
 ARTHUR L. S. HAWZARDELLA
 FRANK M. GIANOLA
 EDWARD A. GUSTA JR.
 KENNETH D. MAGEE
 STEVEN D. LARLUM
 JAMES D. STRAUER
 MORRIS MEDINUS LUNDBERG
 FREDERICK W. BOOK III
 JEFFREY T. WILLY
 RICHARD L. POLLEY
 CHRISTINE A. WARD
 STEPHEN C. KIPER
 THOMAS M. FALLERT
 OLIVIA N. FLEMMER
 WILLIAM D. CLIFFORD
 ROBERT W. DELGADO JR.
 JUDITH F. OLSON
 EDMUND L. OLSEWICK JR.
 DOROTHY A. DAVIS
 CHARLES D. BROWN
 RICHARD J. FEDEROWICZ
 JOHN L. CUNTI
 JIM MCCREE SIMMONDS
 NANCY K. STINSCHER
 L. JOHN ARGENTO
 LU ANN DATESH
 DAVID J. OBERMEIER
 PETER I. SHIMON
 THOMAS H. MAY
 LELAND P. SCHWEMER
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 RAY F. MIDDLEMAN
 JORGE MONROE SCHUMANN
 JOHN W. LEWIS II
 ANTHONY J. RYLLIOTT
 JORGE P. KALHUIS
 JOHN I. P. JIN
 HUNTER A. MCGUARY JR.
 GEORGE RANDAL FOX III
 MICHAEL J. WERNET
 WILLIAM M. CONWELL
 DIANE J. CHRISTEL
 BONNIE P. WEBSTER
 GREGORY A. GROSS
 JOSEPH L. LUYRA
 ANDREW G. KIMBALL
 W. ALAN FORBANCE JR.
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 MARCELLE M. THEIS
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 S. JANE ANDERSON
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 W. SCOTT LAMPRELL
 WILLIAM M. THOMSON
 PAUL S. MAZESKI
 HARRY F. KUNSELMAN
 ANTHONY J. RASH
 PETER A. SANTOS
 CHRISTOPHER PASSODOLIS JR.
 KIMBERLY G. ROBERTS
 EUGENE A. GIOTTO
 Of Counsel
 ; LAWRENCE MCBRIDE

October 9, 1990

NATIONAL ASSOCIATION OF SECURITIES
 DEALERS, INC.

Arbitration Division
 NASD Financial Center
 33 Whitehall Street
 New York, New York 10004

Attention: Leonard J. Amoruso, Esquire

RE: NASD Arbitration 89-01200
 John F. Harty and Erick W. Springer, Trustees
 v. Seligman Marketing, Inc.

Dear Mr. Amoruso:

On Friday, October 5, 1990, the Arbitrators reconvened
 in person at the offices of the Chairman to resume
 discussion and consideration of Respondent's Motion to
 Dismiss. Following that discussion the Panel unanimously
 agreed upon the following decision which we request that
 you forward to the litigants.


1. Respondent's Motion to Dismiss is GRANTED;
2. Respondent's demand for costs and attorney's fees is DENIED;
3. The Arbitrators direct that claimant shall be solely responsible for the NASD prepaid session fee which shall be retained by the NASD;

EXHIBIT B

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4. The Arbitrators decline to issue an opinion.

Best regards,

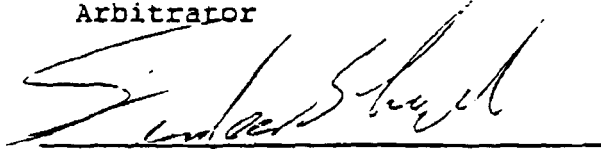


Steven B. Larchuk

Concurring Arbitrators:



GARRY LEE HOGAN - Industry
Arbitrator



FREDERICH E. LIECHTI, ESQUIRE -
Public Arbitrator