

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between: )

Name of Claimant(s) )

Bertram I. and R. Joy Sparr )

CASE #89-01772

Name of Respondent(s) )

Peter Sperling )

Heard before the members of the Arbitration Panel:

Allan J. Fedor, Esq.

Arthur DeStefano

Fred T. Rodgers

**CASE SUMMARY**

This claim was filed with the National Association of Securities, Inc. (NASD) on June 15, 1989. The hearing was conducted in Tampa, Florida on August 13, 1990, September 24 and 25, 1990 with a prehearing conference on July 25, 1990 for a total of ten (10) sessions.

Claimants, Bertram and R. Joy Sparr ("the Sparrs"), alleged that Respondent, Peter Sperling ("Sperling"), was liable for: violation of Florida Blue Sky Law; breach of fiduciary duty; common law fraud; negligence; and violation of the Florida Criminal Practice Act. Claimants alleged that Respondent exercised de facto discretionary control; churned the account and made investments inconsistent with Claimants' investment objectives.

Respondent alleged that: Claimants were sophisticated investors; at no time signed Discretionary Trading Authorization forms; Respondent did not take discretion over the account; there was no churning; Claimants approved all transactions; all investments recommended were suitable; and otherwise denied liability. Respondent asserted the affirmative defenses of: ratification acquiescence; waiver; assumption of risks; and estoppel.

**RELIEF REQUESTED**

Claimants requested damages in the amount of \$200,000.00, plus interest, treble damages and attorney's fees.

Respondent requested dismissal, plus costs and attorney's fees.

### **AWARD**

On July 25, 1990, August 13, 1990, and September 24 and 25, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on June 9, 1989, and by Respondent, Sperling, on October 31, 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 original(s) remain on file with the NASD.
2. Respondent, Sperling, is found not liable and, therefore, all claims against him are hereby dismissed.
3. Claimants' requests for attorney's fees, costs, and treble damages are denied.
4. Respondent's requests for attorney's fees and costs are denied.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Five Thousand and 00/100 (\$5000.00) Dollars (10 sessions x \$500.00 per session, including one prehearing conference). Claimants are hereby assessed Four Thousand Five Hundred and 00/100 (\$4,500.00) Dollars for which the NASD shall retain the Five Hundred and 00/100 (\$500.00) Dollars previously deposited by the Claimants in partial satisfaction thereof. Respondent, Sperling, is hereby assessed Five Hundred and 00/100 (\$500.00) Dollars for the prehearing conference on July 25, 1990, payable to the National Association of Securities Dealers, Inc.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding (including attorney's fees).

### **OTHER ISSUES**

None.

### **ARBITRATORS CONCURRING**

Allan J. Fedor Esq., Arthur De Stefano and Fred T. Rodgers

Dated this 4th day of December 1990.