

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
MADELINE OATES)
)
) Claimant.)
) Case #89-01939
vs.) Award
)
POWER SECURITIES CORP., GREG)
LEIBENGUTH and MICHAEL RIORDEN.)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

Roger C. Benson
James F. Turner III
Arthur De Stefano

CASE SUMMARY

This claim was filed with the NASD, Inc. on July 7, 1989. The hearing was conducted in Tampa, Florida on May 8, and May 14, 1990, with a total of three (3) sessions.

Claimant, Madeline Oates ("Oates"), alleged that Respondents, Power Securities Corp. ("Power"), Greg Leibenguth ("Leibenguth") and Michael Riorden ("Riorden"), were liable for: failure to deliver proceeds from the sale of certain stock; failure to execute trades pursuant to Claimant's instructions; and execution of unauthorized trades in Claimant's account.

Respondent, Leibenguth, alleged that: Riorden was not branch manager of the Rochester Office and was not responsible for Leibenguth's activities; Claimant did not mention a conservative strategy of investing; all trades were authorized by Claimant; Leibenguth never stated that the purchase of Chromalux would be a safe investment for the trust; Claimant had agreed to receive a portion of the proceeds from the sale of Davin stock and reinvest the remainder; Claimant did not request the Taste-it-Presents buy order be cancelled; and otherwise denied liability.

Respondent, Riorden, alleged that: he was not the manager of the Rochester Office nor was he responsible for supervision of Leibenguth; Claimant made no mention of unauthorized trades nor expressed any dissatisfaction with Leibenguth; and otherwise denied liability. Riorden also asserted a counterclaim against Claimant for: costs incurred in defending the claim; lost earnings; and damage to his character.

Claimant moved to strike the counterclaim.

Respondent, Power, failed to file an Answer and did not appear at the hearing to defend.

RELIEF REQUESTED

Claimant requested damages in the amount of \$48,805.00; \$100,000.00 in punitive damages; attorney's fees pursuant to Florida Statute, Section 517; interest; and, other costs. Respondents, Leibenguth and Riorden, requested dismissal of the claim and Riorden asserted a counterclaim and requested unspecified damages and costs. Respondent, Power, failed to file an Answer and did not appear at the hearing to defend.

AWARD

On May 8 and May 14, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on May 18, 1989; and by Respondents, Leibenguth on December 14, 1989; Riorden on December 13, 1989; and not signed by Power as required pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code"). Respondent, Power, being an NASD member firm at the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing and Respondent, Power, neither appearing at the hearing nor requesting any postponement thereof, notwithstanding its knowledge of this arbitration as evidenced more fully in the record of proceedings, the arbitration panel 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, Power, is hereby liable and shall pay to Claimant the amount of Forty Eight Thousand Eight Hundred Five and 00/100 (\$48,805.00) Dollars plus Eight Thousand Seven Hundred Eighty Five and 00/100 (\$8,785.00) Dollars, as interest at the legal rate of 12% per annum, for a total of Fifty Seven Thousand Five Hundred Ninety and 00/100 (\$57,590.00) Dollars.
3. Respondents, Power and Leibenguth, are hereby liable, jointly and severally, and shall pay to the Claimant the amount of Five Thousand Five Hundred Thirty Eight and 00/100 (\$5,538.00) Dollars for attorney's fees pursuant to Section 517.211, Florida Statutes.
4. Respondent, Power, is hereby liable and shall pay to Claimant the further amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars as punitive damages.
5. Respondent, Riorden, is not liable to Claimant and, therefore, the claim against him is hereby dismissed.
6. Claimant/Counter Respondent, Oates, is hereby liable to Respondent/Counter Claimant, Riorden, and, shall pay to Respondent/Counter Claimant the amount of Three Hundred Fifty and 00/100 (\$350.00) Dollars for costs and expenses.

7. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Two Thousand Two Hundred Fifty and 00/100 (\$2,250.00) Dollars (\$750.00 x three sessions). Respondents, Leibenguth and Power, are hereby assessed forum fees in the amount of Seven Hundred Fifty and 00/100 (\$750.00) Dollars, jointly and severally, to be paid directly to the National Association of Securities Dealers, Inc. Respondent, Power, is hereby assessed the further amount of Fifteen Hundred and 00/100 (\$1,500.00) Dollars. Seven Hundred Fifty (\$750.00) Dollars of which shall be paid directly to the Claimant as a return of her filing fee and the remaining Seven Hundred Fifty and 00/100 (\$750.00) Dollars to be paid to the NASD, Inc. The NASD, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant with the NASD, Inc.
8. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorneys' fees.

OTHER ISSUES

1. Jurisdiction exists pursuant to Sections 12 and 13 of the Code.
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, Power. The NASD, Inc has made every attempt to locate and serve Respondent, Power, with Notice of this hearing as demonstrated by the evidence of record contained in Arbitrator's Exhibit #2.

ARBITRATORS CONCURRING

Roger C. Benson
James F. Turner III
Arthur De Stefano

Dated: May 29, 1990