

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Shochet Securities, Inc.

CASE #89-02417

Name of Respondent(s)

Henry Bloch

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Heard before the members of the Arbitration Panel:

John B. Kelley, Esq.  
Mr. Andrew E. Baluk  
Mr. Joseph M. Luby

**CASE SUMMARY**

This claim was filed with the National Association of Securities, Inc. (NASD) on August 28, 1989 and the Counterclaim was filed on November 13, 1989. The hearing was conducted in Fort Lauderdale, Florida on October 30, 1990, with a total of two (2) sessions.

Claimant, Shochet Securities, Inc. ("Shochet"), alleged that Respondent, Henry Bloch ("Bloch"), was liable for: breach of contract; open account; account stated; and money lent. Claimant alleged that Respondent is indebted to Claimant for the deficiency in Respondent's margin account relating to his trading in options.

Respondent asserted affirmative defenses including: estoppel; fraud; duress; failure of consideration; illegality; and contributory negligence. Respondent alleged that he is an unsophisticated investor; Claimant did not explain the documents to Bloch; and Claimant did not explain the risks of margin accounts or options trading.

Respondent/Counter Claimant asserted a counterclaim and alleged that Claimant/Counter Respondent is liable for breach of fiduciary duties, breach of oral agreement and fraud by: failing to supervise its account executives in order to prevent trading in unsuitable securities; failing to advise Bloch of the risks involved in margin accounts or options trading; making material misrepresentations and failing to execute Bloch's instructions.

Shochet denied liability and asserted affirmative defenses including: consent; that Bloch empowered Shochet to sell the securities in his account without notice; assumption of risk; lack of causation; compliance with applicable industry standards and regulations; ratification and acquiescence; laches; that Shochet did not act with scienter or in a reckless manner; intervening causes; failure to mitigate damages; comparative negligence; waiver; lack of reliance; due diligence; that Bloch's damages were caused by persons or entities other than Shochet; the claims of breach of fiduciary duty and fraud have not been brought within the time prescribed by law; and there is no provision for an award of attorney's fees in law or pursuant to the Rules of Arbitration.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$58,856.76 plus interest, costs, and attorney's fees. Respondent requested dismissal of the claim and counterclaimed for damages in the amount of, approximately, \$40,000.00 plus interest, costs and attorney's fees.

#### AWARD

On October 30, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on February 2, 1990, and by Respondent, Bloch, on December 8, 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.
2. Respondent, Bloch, is found not liable and, therefore, all claims against him are hereby dismissed.
3. Claimant/Counter Respondent, Shochet, is found not liable and, therefore, all claims against it are hereby dismissed.
4. Claimants' requests for attorney's fees and costs are denied.

5. Respondent/Counter Claimant's requests for costs and attorney's fees are denied.

6. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of One Thousand Eight Hundred and 00/100 (\$1,800.00) Dollars (2 sessions x \$500 per session for the claim plus \$400 per session for the counterclaim). Claimant is hereby assessed Nine Hundred and 00/100 (\$900.00) Dollars for which the NASD shall retain the Five Hundred and 00/100 (\$500.00) Dollars previously deposited in partial satisfaction thereof. Respondent, Bloch, is hereby assessed Nine Hundred and 00/100 (\$900.00) Dollars payable to the NASD, Inc.

7. 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**

15/  
John B. Kelley, Esq.

15/  
Mr. Andrew E. Baluk

15/  
Mr. Joseph M. Luby

Dated: November 5, 1990