

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
Shepherd and Corinne Nathan)	
)	
)	Case No. 89-02639
)	
<u>Name of Respondent(s)</u>)	
)	
CommVest Securities, Inc.)	
Ellen Margaretten)	
Herzog, Heine, Geduld, Inc.)	
Michael A. Solomon)	

Heard before the Arbitrator:

Robert Herschmann, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on February 5, 1990. The hearing was conducted in Fort Lauderdale, Florida on October 9, 1990 with a total of two (2) sessions.

Claimants, Shepherd and Corinne Nathan ("Nathans"), alleged that Respondents, CommVest Securities, Inc. ("CV"), Herzog, Heine, Geduld, Inc. ("Herzog"), Ellen Margaretten ("Margaretten") and Michael Solomon ("Solomon"), failed to execute their market order to sell 4,000 shares of United States Surgical Corp. ("USSC," a NASDAQ stock) on October 19, 1987.

Respondents CV and Margaretten denied all allegations of wrongdoing; denied that Margaretten was employed at CV at the time of the failure to execute and alleged the affirmative defenses of failure to state a claim; Margaretten not proper party; laches; and, prior settlement. Respondents, CV and Margaretten, crossclaimed against Herzog for indemnification.

Respondent Herzog denied all allegations of wrongdoing; alleged the affirmative defenses of hearsay; laches; incorrect calculations; prior settlement; accord and satisfaction; crossclaimed against CV for indemnification; and, counterclaimed for reimbursement of monies paid. Herzog further denied the allegations of CV's crossclaim.

Respondent Solomon denied all allegations of wrongdoing.

Claimants denied the allegations of Herzog's counterclaim.

RELIEF REQUESTED

Claimants requested damages in the amount of \$11,625.00 and punitive damages of \$10,000.00. CV and Margaretten requested dismissal, costs and indemnification by Herzog. Herzog requested dismissal, indemnification, reimbursement of \$9,625.00 for which they previously settled with Claimants, costs and expenses.

AWARD

On October 9, 1990, the arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on September 19, 1989, and by Respondents CV on February 1, 1990; Margaretten on January 31, 1990; Herzog on January 12, 1990; and, Solomon on February 12, 1990. The arbitrator, 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. Respondents, CV and Solomon, are found not liable to the Claimants and, therefore, all claims against them are hereby dismissed.
2. Respondent, Herzog, is found liable and shall pay to Claimants the amount of Four Thousand Six Hundred Twenty Five and 00/100 (\$4,625.00) Dollars.
3. Claimants' request for punitive damages is denied.
4. Cross Respondent, Herzog, is found not liable to Cross Claimant, CV, and, therefore, the crossclaim against it is hereby dismissed.
5. Cross Respondent, CV, is found not liable to Cross Claimant, Herzog, and, therefore, the crossclaim against it is hereby dismissed.
6. Claimants/Counter Respondents, Nathans, are found not liable to the Respondent/Counter Claimant, Herzog, and, therefore, the counterclaim against them is hereby dismissed.
7. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrator has assessed forum fees in the amount of Two Thousand Eight Hundred and 00/100 (\$2,800.00) Dollars (two sessions x \$1,400.00). Claimants are hereby assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars for which the NASD shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee in full satisfaction thereof. Respondent, CV, is hereby assessed Eight Hundred and 00/100 (\$800.00) Dollars for which the NASD shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee in partial satisfaction thereof. Respondent, Herzog, is hereby assessed Twelve Hundred and 00/100 (\$1,200.00) Dollars for which the NASD shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee in partial satisfaction thereof. Respondent, Solomon, is hereby assessed Four Hundred and 00/100 (\$400.00) Dollars payable to the National Association of Securities Dealers, 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

Pursuant to Respondant Margaretten's Motion to Dismiss as not a proper party to this case, that motion is granted and Margaretten is dismissed as a party to this arbitration.

ARBITRATOR CONCURRING

Robert Herschmann
Robert Herschmann, Esq.

Received this 17th, day of October 1990.