

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between	
<u>Name of Claimant(s)</u>	
Stephen B. Keyser, David J. Baron and Fergeson, Skipper, Shaw, Keyser, Baron and Tirabassi, P.A. Profit Sharing Plan	Case No. 8S-02763
<u>Name of Respondent(s)</u>	
Hopper Soliday and Co., Inc. Robert L. Fryer, Jr.	

REPRESENTATION

For Claimants, Stephen B. Keyser ("Keyser"), David J. Baron ("Baron") and Fergeson, Skipper, Shaw, Keyser, Baron and Tirabassi, P.A. Profit Sharing Plan ("Fergeson, Skipper"): David Maglich, Esq. of Fergeson, Skipper Shaw, Keyser, Baron and Tirabassi, P.A.

For Respondents, Hopper Soliday & Co., Inc. ("Hopper") and Robert Freyer, Jr. ("Freyer"): John Spelman, Esq. of Klehr, Harrison, Harvey, et al.

CASE INFORMATION

Statement of Claim filed: October 4, 1989 and amended on July 9, 1990.

Claimants' Submission Agreements signed by David Baron, Stephen Keyser and James Fergeson on behalf of Fergeson, Skipper on October 2, 1989.

Respondents, Hopper and Freyer's, Statement of Answer filed on: June 11, 1990 and amended on February 15, 1991. Respondents' Submission Agreements signed by Freyer on May 30, 1990.

Respondent, Hopper, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code.

HEARING INFORMATION

On February 1, 1991, in Tampa, Florida, pre-hearing conference lasting one (1) session was conducted via telephone conference call without an arbitrator.

On September 23, 24, and November 12, 1991, in Tampa, Florida, hearings lasting six (6) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for violations of Rule 10b-5 of the Securities Exchange Act of 1934; violations of Chapter 517 of the Florida Statutes; violations of the rules of the NYSE and NASD; negligence; fraud; and breach of fiduciary duty.

Claimants alleged that Respondents: failed to inform them of the risks involved in making a short sale on margin; misrepresented that a certain mutual fund would not sell at an immediate discount to its offering price nor at a discount to net asset value; failed to disclose that Respondents would be acting as brokers for the fund; misrepresented the safety of certain stocks; purchased stocks which were unsuitable for Claimants' profit sharing plan; and, otherwise acted in a manner inconsistent with the best interests of Claimants.

Respondents denied all allegations of wrongdoing and alleged that: Claimants were sophisticated investors; Respondents had no fiduciary relationship with Claimants; the purchases of the Mutual Fund were not based on any representations by Respondents; Claimants were aware of the risks involved; Respondents made no misrepresentations or omissions; Respondents did not represent that the mutual fund was different from any other initial public offering; and Respondents did not conceal any information from the Profit Sharing Plan to advance their own interests. Respondents asserted the affirmative defenses of: failure to state a claim; statutes of limitations; res iudicata; failure to mitigate damages; failure to file separate claims; lack of reliance; and, Respondents did not knowingly, intentionally or recklessly make any false or misleading statements or omit to state any material facts.

RELIEF REQUESTED

Claimants requested damages totaling \$142,000.00, plus costs, interest, attorney's fees, and punitive damages.

Respondents requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

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.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Hopper and Freyer, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' Requests for attorney's fees, costs and punitive damages are denied

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,500.00 (Six sessions x \$750.00 per session). Claimants are hereby assessed \$4,500.00, jointly and severally, for which the NASD shall retain the \$550.00 previously deposited in partial satisfaction thereof.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

/s/
John P. Cullem, Esq.

Public

/s/
Harold M. May

Public

/s/
Jess G. Tucker

Industry

Date of Decision: February 13, 1992