

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Robert, Cynthia and Janice)
Danielewski)

) Case No. 89-03147
)

Name of Respondent(s))

Jeff Zack)
L.F. Thompson & Co.)
Otra Clearing, Inc.)

Heard before the Arbitrator:

Roger C. Benson

CASE SUMMARY

This claim was filed with the National Association of Securities Dealers, Inc., on November 10, 1989. The hearing was conducted in Tampa, Florida, on December 14, 1990, with a total of one session.

Claimants, Robert, Cynthia and Janice Danielewski ("the Danielewskis"), alleged that Respondents, Jeff Zack ("Zack"), L. F. Thompson and Co. ("Thompson"), and Otra Clearing, Inc. ("Otra"), were liable for: misrepresenting the value of certain stock and warrants; misrepresenting that one stock's issuer was going to merge with another company; concealing the commissions which were charged; and charging excessive commissions.

Respondent, Zack, alleged that: he provided Claimants the information that was given to him by Thompson; Zack was not aware of the erroneous nature of the information; and, that other individuals informed the NASD and SEC of the fraud being perpetrated by the principals of Thompson prior to Claimants' investing with Thompson, but nothing was done to shut down Thompson.

Respondent, Otra, alleged that: it acted solely as a clearing broker and made no representations to Claimants; and, Claimants have not identified any violations or breaches of duties by Otra. Otra asserted the affirmative defenses of: failure to state a claim; failure to mitigate damages; recklessness on the part of Claimants; the damages were caused by parties other than Otra; Otra had owed no duty to Claimants; and, bad faith on the part of Claimants.

Respondent, Otra, also asserted a cross-claim against Respondent, Thompson, for indemnification.

Respondent, Thompson, did not file an Answer.

Respondents, Thompson and Zack, did not appear at the hearing to defend.

RELIEF REQUESTED

Claimants requested damages in the amount of \$16,406.00.

Respondent, Otra, requested dismissal of the claim, plus costs, and attorney's fees and cross claimed against Thompson for indemnification.

Respondent, Zack, requested dismissal of the claim.

Respondent, Thompson, failed to file an Answer.

AWARD

On December 14, 1990, the arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on November 6, 1989, and by Respondent, Zack, on January 31, 1990, Otra, on January 8, 1990, and not signed by Respondent, Thompson, as required pursuant to Section 12 of the NASD, Inc. Code of Arbitration Procedure, ("Code"), Respondent L. F. Thompson and Co., 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 Respondents, Zack and Thompson, neither appearing at the hearing, nor seeking any adjournment thereof notwithstanding their knowledge of this arbitration as evidence in the record of proceedings, this arbitrator has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Otra, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Respondents, Zack and Thompson, are found liable, jointly and severally, and shall pay to the Claimants the amount of Fifteen Thousand Two Hundred Six and 00/100 (\$15,206.00) Dollars, plus interest at the legal rate of 12% per annum from April 21, 1989, to December 14, 1989, in the amount of Three Thousand Ten and 00/100 (\$3,010.00) Dollars for a total due to the Claimants of Eighteen Thousand Two Hundred Sixteen and 00/100 (\$18,216.00) Dollars.
3. Respondent, Otra's request for attorney's fees and costs is denied.
4. Cross/Respondent, Thompson, is not liable to Cross/Claimant, Otra and therefore, the crossclaim against it is hereby dismissed.

5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of One Thousand One Hundred Fifty and 00/100 (\$1150.00) Dollars (1 Session x 400.00 per session for the Claim plus Seven Hundred Fifty and 00/100 (\$750.00) Dollars for the crossclaim by Otra against Thomson). Respondents, Zack and Thompson, are hereby assessed One Thousand One Hundred Fifty and 00/100 (\$1150.00) Dollars, jointly and severally, Four Hundred and 00/100 (\$400.00) Dollars of which shall be payable directly to Claimants as a return of their filing fee and Seven Hundred and Fifty and 00/100 (\$750.00) Dollars of which shall be payable directly to the NASD, Inc. The National Association of Securities Dealers, Inc., shall retain the Four Hundred and 00/100 (\$400.00) Dollars previously deposited by the Claimants in partial satisfaction of such forum fees.

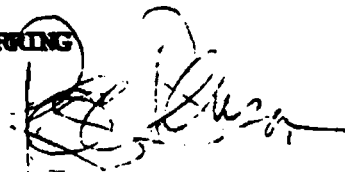
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

1. Jurisdiction exists pursuant to Section 12 of the Code and pursuant to the Form U-4 executed by Respondent, Zack.

2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this arbitrator finds service upon and adequate notice to Respondents, Zack and L.F. Thompson. The National Association of Securities Dealers, Inc. has made every attempt to locate and serve Respondents, Zack and L. F. Thompson, with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

ARBITRATOR CONCURRING

A handwritten signature in dark ink, appearing to read "R. C. Benson", is written over a horizontal line.

Roger C. Benson, Esq.

Dated: February 12, 1991