

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Judith Stavis)

Case No. 90-00140

Name of Respondent(s))

Profile Investments Corp.)

Robert Schlein)

Madlyn Ferro)

Alan Beshany)

Heard before the members of the Arbitration Panel:

Casey W. Mills, Esq.

Arieh Leo Douer

George Silver

CASE SUMMARY

This claim was filed with the National Association of Securities Dealers, Inc., on January 11, 1990. The hearing was conducted in Fort Lauderdale, Florida on December 5, 1990 with a total of two (2) sessions.

Claimant, Judith Stavis ("Stavis"), alleged that Respondents, Madlyn Ferro ("Ferro"), Alan Beshany ("Beshany"), Robert Schlein ("Schlein"), and Profile Investments, Corp. ("Profile"), were liable for: negligence; violation of Florida Statute, Chapter 517; common law fraud; and, negligent supervision. Claimant alleged that: her account was traded with reckless abandon; trades were made without her authorization; investments were bought and sold at an excessive rate; and, investments were of an extremely speculative and risky nature in contravention of Claimant's investment objectives.

Respondents, Beshany, Schlein and Profile, failed to file an Answer and did not appear at the hearing to defend.

Respondent, Ferro, failed to file an Answer but appeared at the hearing and defended by alleging that she was merely an order taker for Mr. Beshany and that Mr. Beshany made all the recommendations.

RELIEF REQUESTED

Claimant requested damages in the amount of \$16,000.00 plus interest, punitive damages in the amount of \$50,000.00 plus costs and attorney's fees.

Respondents, Beshany, Schlein and Profile, failed to file Answers.

Respondent, Ferro, requested dismissal of the Claim.

AWARD

On December 5, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on December 21, 1989, and not signed by Respondents, Ferro, Beshany, Schlein or Profile, as required pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code"), Respondent, Profile, being an NASD member firm and Respondents, Ferro, Beshany and Schlein, being persons associated with an NASD member firm, Profile Investments, Inc. at the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing and Respondents, Beshany, Schlein and Profile, neither appearing at the hearing nor seeking any adjournment thereof, this arbitration panel has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Ferro, is found not liable and, therefore, all claims against her are hereby dismissed.
2. Respondents, Beshany, Schlein and Profile, are found liable, jointly and severally, for common law fraud and shall pay to the Claimant the amount of Fifteen Thousand Eight Hundred Fifty Seven and 00/100 (\$15,857.00) Dollars, plus interest at the legal rate of 12% per annum from September 30, 1987, to December 5, 1990, in the amount of Five Thousand Eight Hundred Eighty Seven and 30/100 (\$5,887.30) Dollars for a total due to the Claimant of Twenty One Thousand Seven Hundred Forty Four and 30/100 (\$21,744.30) Dollars.
3. Respondents, Beshany, Schlein and Profile, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of Ten Thousand and 00/100 (\$10,000.00) Dollars for punitive damages. The Panel finds that the conduct complained of, including lack of supervision and complete disregard of Claimant's stated investment objectives revealed a willful, wanton and reckless disregard for Claimant's rights and constituted common law fraud. The Panel bases its authority to Award punitive damages on the Federal Arbitration Act and the case law interpreting that Act as referenced in Claimant's Memorandum of Law.
4. Claimant's request for attorney's fees is denied.

5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of One Thousand and 00/100 (\$1,000.00) Dollars (2 sessions x 500.00 per session). Respondent, Ferro, is hereby assessed One Thousand and 00/100 (\$1,000.00) Dollars, Four Hundred and 00/100 (\$400.00) Dollars of which shall be paid directly to the Claimant as a return of her filing fee, and Six Hundred and 00/100 (\$600.00) Dollars of which shall be paid to the National Association of Securities Dealers, Inc., Claimant having only paid Four Hundred and 00/100 (\$400.00) Dollars of the Five Hundred and 00/100 (\$500.00) Dollar filing fee. The NASD shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant 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 Forms U-4 signed by Respondents, Beshary and Schlein.

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, Respondents, Beshary, Schlein and Profile. The NASD has made every attempt to locate and serve Respondents, Beshary, Schlein and Profile, with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

ARBITRATORS CONCURRING

ARBITRATOR DISSENTING

Arbitrator, Leo Douer, dissents only to paragraph #6 of the Award and otherwise concurs in the decision.

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Arieh Leo Douer

Dated: February 11, 1991