

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
<u>Name of Claimant(s)</u>)	
Alessandra Nicoloso)	
)	
<u>Name of Respondent(s)</u>)	Case No. 90-00330
E.F. Hutton & Company, Inc.)	
Richard Donath)	
Sidney Fein)	

Heard before the members of the Arbitration Panel:

Casey W. Mills, Esq.
Charles H. Brodzki, Esq.
Janet C. Zwiebel

CASE SUMMARY

This claim was filed with the NASD, Inc. on January 31, 1990. The hearing was conducted in Fort Lauderdale, Florida on October 2 and 3, 1990 with a total of three (3) sessions.

Claimant, Alessandra Nicoloso ("Nicoloso"), alleged that she was a completely unsophisticated investor; that she opened a discretionary account; that Respondents, E. F. Hutton & Co. ("Hutton"), Richard Donath ("Donath") and Sidney Fein ("Fein") along with Emanuel Sottiriou and Clifford Dvorkin, were responsible for the management of her account; invested Claimant's funds in options which were wholly unsuitable for her stated investment objective of preservation of capital; utilized a margin account without Claimant's knowledge; failed to inform Claimant of the risks; that Hutton failed to supervise Fein and Donath; that Respondents breached their fiduciary duties to Claimant; and, that Respondents' actions constituted a violation of Section 10(b), Rule 10b-5 and Section 20 of the 1934 Exchange Act; Section 18 U.S.C. 1962 (RICO); Section 517.301, Florida Statutes; common law fraud; gross negligence; and, Section 206 of the 1940 Investor Advisors Act.

Respondents, Hutton and Fein, denied all allegations of wrongdoing and alleged that Claimant signed two options agreements; acknowledged receipt of option risk disclosure documents and accuracy of her financial information; signed a full power of attorney authorizing Hutton to follow Sottiriou's instructions and indemnifying Hutton; received confirmations and monthly

account statements and is barred by the NASD six year statute of limitations. Respondents alleged the affirmative defenses of failure to state a claim; good faith and compliance with applicable rules; no causal relationship; failure to mitigate; no reasonable reliance; waiver; discharge of duties; losses due to market fluctuations; United States and New York constitutions preclude punitive damages; and, New York law precludes punitive damages in arbitration.

Respondent, Donath, while included in the Joint Answer of Hutton and Fein, had no knowledge of these proceedings and made no Answer on his own behalf.

RELIEF REQUESTED

Claimant requested damages in the amount of \$386,000.00; RICO damages of \$1,158,000.00; punitive damages of \$1,000,000.00; attorney's fees and costs.

Respondent requested dismissal and costs.

AWARD

On October 2 and 3, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on May 11, 1989, and by Respondents Hutton on April 27, 1990 and Fein on October 2, 1990. Respondent Donath did not execute a submission agreement and, as explained in "Other Issues," the Panel does not have jurisdiction over Donath. 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, Inc.
2. Respondents, Hutton and Fein, are found liable, jointly and severally, and shall pay to Claimant the amount of Seventy Two Thousand Nine Hundred and 00/100 (\$72,900.00) Dollars inclusive of interest at the legal rate of 12% per annum.
3. Respondents, Hutton and Fein, are further liable, jointly and severally, and shall pay to the Claimant the amount of Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars for attorney's fees pursuant to Section 517.211, Florida Statutes.
4. Claimant's requests for punitive damages and RICO damages are denied.

5. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondents, Hutton and Fein, are hereby assessed forum fees, jointly and severally, in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars (three sessions x \$1,000.00) of which they shall pay One Thousand and 00/100 (\$1,000.00) Dollars directly to Claimant and Two Thousand and 00/100 (\$2,000.00) Dollars to the National Association of Securities Dealers, Inc. The NASD shall retain the One Thousand and 00/100 (\$1,000.00) Dollar filing fee previously deposited by the Claimant which Claimant shall recoup as set forth above.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

Respondent, Donath, did not receive adequate service or notice in this proceeding. Although Donath had left his employment with Hutton at the time Hutton received service of the claim, Hutton filed an Answer on behalf of Donath. Therefore, the NASD was without knowledge that further attempts to serve Donath were required and none were made. As a result of the forgoing, the claim against Donath is dismissed without prejudice.

ARBITRATORS CONCURRING

Casey W. Mills, Esq. and Janet C. Zwiebel

ARBITRATOR DISSENTING

The undersigned arbitrator dissents only to that part of this Award specifying the amount of damages, but concurs in all other parts of this Award, including liability.

Charles H. Brodzki, Esq.

Received this 15th day of October 1990.