

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Frances E. Lochner)

) Case No. 90-00412

Name of Respondent(s))

Robert William Stroup)

Frank Samuelsohn)

Heard before the members of the Arbitration Panel:

Arthur J. Leibell, Esq.

Public

Sterling F. Tremayne

Public

Jack C. Aycock

Industry

REPRESENTATION

Claimant, Frances E. Lochner ("Lochner"), was represented by Thomas R. Grady, Esq. of Thomas R. Grady, P.A.

Respondents, Robert Stroup ("Stroup") and Frank Samuelsohn ("Samuelsohn"), were pro se.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 8, 1990. Claimant alleged that she was an unsophisticated investor with no income seeking conservative investments with moderate growth; that she opened accounts at Thomson McKinnon Securities, Inc. ("TMSI") with Stroup as her account executive and where Samuelsohn was the branch office manager and SROP; that Respondents had de facto discretion over her accounts; that Respondents made misrepresentations of and omitted to state material facts; recommended and effected trades in options, index options, stocks and bonds which were unsuitable for Claimant in light of her expressed objectives; made unauthorized use of margin; churned the accounts; that Respondents' actions constituted fraud, negligence, gross negligence, breach of fiduciary duty, and violation of Sections 772.11 (Civil Theft), 517.301 and 772.803 (RICO), Florida Statutes and the 1933 and 1934 Federal Securities Acts.

Respondent, Stroup, filed a Statement of Answer with the NASD on May 15, 1990. Respondent, denied all allegations of wrongdoing and alleged that

Claimant authorized and ratified all activities; that he acted in accord with all rules and with approval of TMSI; and, that TMSI is responsible for any wrongdoing. Stroup alleged the affirmative defense of claim discharged in bankruptcy of TMSI; waiver, estoppel and laches; loss due to 1987 crash; failure to state a claim; misrepresentations by Claimant; and, prior dismissal with prejudice.

Respondent, Samuelsohn, filed a Statement of Answer with the NASD on June 24, 1991. Respondents denied all allegations of wrongdoing and alleged that when he became aware of Claimant's complaint at TMSI, he forwarded it to Compliance and conducted his own investigation; and, that Claimant understood the risks and was suitable to trade options. Samuelsohn also adopted the answers of Stroup.

Respondent, Stroup, filed a counterclaim and alleged that Claimant has libeled him. Claimant denied all allegations of the counterclaim and alleged the defenses of privilege and truth.

RELIEF REQUESTED

Claimant requested damages, jointly and severally, in the amount of \$55,000, interest, punitive damages, attorney's fees and costs.

Respondents requested dismissal and costs. Stroup further requested damages on his counterclaim of \$55,000.00.

AWARD

On January 24, and July 22 and 23, 1991, in Fort Lauderdale, Florida, during a hearing last five (5) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 28, 1990; by Respondent, Stroup, on July 22, 1991; by Respondent, Samuelsohn, on June 20, 1991; and, signed on July 15, 1990, by John Chung on behalf of Respondent, Prudential.

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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.
2. Respondent, Samuelsohn, is found not liable and, therefore, all claims against him are hereby dismissed.
3. Respondent, Stroup, is found liable and shall pay to the Claimant the amount of \$23,524.00, plus interest at the legal rate of 12% per annum from July 31, 1988 to date of Award in the amount of \$8,704.00, for a total due to the Claimant of \$32,228.00.

4. Respondent, Stroup, is also found liable and shall pay to the Claimant the further amount of \$5,776.62 for expert witness fees.

5. Claimant's requests for attorney's fees and punitive damages are denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,500.00 (five sessions x \$500.00). Respondent, Stroup, is hereby assessed \$2,500.00, \$500.00 of which shall be paid directly to the Claimant, and \$2,000.00 of which shall be paid to the National Association of Securities Dealers, Inc.

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

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

OTHER ISSUES

This claim initially named Prudential-Bache Securities, Inc. ("Prudential") as a party. Pursuant to Prudential's Motion to Dismiss, it was removed as a party on January 25, 1991, after the claims against it were dismissed with prejudice by this Panel. At the beginning of the hearing, Mr. Stroup withdrew his counterclaim and clarified that no crossclaim against Samuelsohn was intended.

Arbitrator, Aycock, dissents only to that portion of the Award that finds the Respondent, Samuelsohn, not liable and concurs in the remainder of the Award.

Concurring Arbitrators' Signatures

/s/
Arthur J. Leibell, Esq.

/s/
Sterling F. Tremayne

Dissenting Arbitrator's Signature

/s/
Jack C. Aycock

Date of Decision: September 3, 1991