

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Dave M. Linehan)

Case No. 90-00438)

Name of Respondent(s))

Richard Wolff)

Robert Schlien)

Alan Stewart Beshany)

Heard before the Arbitrator:

John B. Kelley, Esq.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 9, 1990. Claimant, Dave M. Linehan ("Linehan"), alleged that Respondents, Richard S. Wolff ("Wolff"), Robert Schlien ("Schlien"), and Alan Stewart Beshany ("Beshany"), were informed of Claimant's investment objectives of preservation of capital, liquidity and return; that Wolff recommended and sold penny stocks to Claimant which were unsuitable; that Profile Investments was virtually the only market maker in those stocks; that Profile was owned by Schlien and Beshany; that Respondents made misrepresentations of and omitted to state material facts; that Respondents' actions constituted breach of fiduciary duty; negligent supervision and violations of Section 517.301, Florida Statutes; and, that Claimant suffered a loss.

In a Statement of Answer filed with the NASD on May 10, 1990, Respondent, Wolff, denied all allegations of wrongdoing and alleged that he fully disclosed the risks and advised Claimant not to invest above \$10,000.00 in penny stocks; that Claimant's investment objectives were growth and speculation; and, that Wolff was fully familiar with Claimant's financial position, investment experience and suitability.

Respondent, Schlien, responded to the original Claim against Allison Baer and Wolff and alleged that he had no involvement with that firm. Schlien did not respond to the Amended Claim nor appear at the hearing to defend the Claim.

Exhibit "B"

Respondent, Beshary, did not file a response or appear at the hearing to defend the Claim (see Other Issues).

RELIEF REQUESTED

Claimant requested damages in the amount of \$8,775.00; interest from October 17, 1988; punitive damages in the amount of \$20,000.00; costs; and, attorney's fees.

Respondents Wolff and Schlien, requested dismissal.

AWARD

On January 9 and February 25, 1991, in Fort Lauderdale, Florida, during a hearing lasting four (4) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 5, 1990 and by Respondent on May 1, 1990, and not signed by Schlien as required by Sections 12 and 25 of the Code.

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

1. Respondents, Wolff and Schlien, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$8,775.00, plus interest at the legal rate of 12% per annum from October 17, 1988 to date in the amount of \$2,310.50 for a total due to the Claimant of \$11,085.50.
2. Respondents, Wolff and Schlien, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$7,162.50 for attorney's fees pursuant to Section 517.211, Florida Statutes.
3. Claimant's request for costs and punitive damages are denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$900.00 (3 sessions x \$300.00). Claimant is hereby assessed \$450.00 for which the NASD shall retain the \$300.00 session deposit previously paid in partial satisfaction thereof. The NASD shall also retain the \$100.00 non-refundable filing fee paid by the Claimant. Respondents, Wolff and Schlien, are hereby assessed \$450.00, jointly and severally, payable 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

1. As a result of the notification that Respondent, Beshany, had filed for relief under 11 U.S.C. Chapter 7, received by the NASD on or about February 14, 1991, and the automatic stay pursuant thereto, Mr. Beshany has been removed as a party to this matter and no findings have been made regarding his liability in this matter.

2. Pursuant to the record evidence as contained in the NASD files, and Respondent Schlien's letter dated December 17, 1990 and received by the NASD on December 19, 1990, responding to the Statement of Claims, the undersigned arbitrator finds actual notice to and adequate service effected on Respondent, Schlien.

Arbitrator Signature


John B. Kelley, Esq.

Date of Decision: March 25, 1991