

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between/Among

Robert Barra and James Kierman JTWROS

Claimants

vs.

Berkeley Securities Corporation and  
Robert Fiorese

Respondents

Case #90-00529  
AWARD

CASE SUMMARY

This case was filed on February 20, 1990. Claimants, Robert Barra and James Kierman, allege that Respondent, Robert Fiorese, the registered representative employed by Respondent, Berkeley Securities Corporation, misrepresented several facts concerning Joie De Vivre Resorts, Inc. Claimants allege that Fiorese advised them that the company was a risk-free investment that would yield a minimum profit of fifty percent and that Berkeley was the sole market maker. Claimants further allege that Fiorese purchased 10,000 shares of the company instead of \$10,000.00 worth of shares and failed to sell the securities as instructed.

Respondent, Berkeley Securities Corporation, denies liability. Said Respondent contends that Fiorese and the company performed the appropriate due diligence tasks and that Fiorese was adequately supervised. Berkeley further contends that Claimants failed to timely complain about their account.

RELIEF REQUESTED

Claimants request that the arbitrator award them \$14,375.00, the amount of their investment.

Respondent, Berkeley Securities Corporation, requests that the claim be denied and that it be awarded damages in the amount of \$8,200.00 to cover the costs incurred in research and presentation of this case.

AWARD

On July 24, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimants on February 14, 1990 and by the Respondent, Berkeley Securities Corporation on April 11, 1990. Respondent, Robert Fiorese did not submit a submission agreement, file an Answer or appear at the hearing. The hearing was held in New York City, New York and consisted of one (1) session. This arbitrator, 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. Respondents, Berkeley Securities Corporation and Robert Fiorese, are liable to the Claimants for a total amount of Four Thousand Three Hundred And Seventy Five Dollars And Zero Cents (\$4,375.00) as further indicated below.
2. Respondent, Berkeley Securities Corporation, is liable to Claimants for One Thousand And Ninety Three Dollars And Seventy Five Cents (\$1,093.75) which represents twenty-five percent (25%) of the total award.
3. Respondent, Robert Fiorese, is liable to Claimants for Three Thousand Two Hundred And Eighty One Dollars And Seventy Five Cents (\$3,281.25) which represents seventy-five percent (75%) of the total award.
4. The parties shall each bear their respective costs, including attorneys' fees.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the total forum fees to be assessed is \$400.00. Claimants are assessed \$200.00 and Respondent Berkeley Securities is assessed \$200.00 which shall be paid as stated in items 6 and 7.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain \$300.00 of the \$400.00 filing fee previously deposited by the Claimant.
7. In accordance with Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$100.00 deposited by Respondent, Berkeley Securities Corporation, pursuant to Section 30 and apply it to the Section 43 forum fees. Said Respondent shall pay Claimants the remaining \$100.00 of the \$200.00 forum fees assessed.

OTHER ISSUES

Based upon the evidence submitted by Respondent, Berkeley Securities Corporation, regarding notice given to Robert Fiorese, this arbitrator finds that proper notice as well as jurisdiction exists pursuant to Section 12(a) of the Code of Arbitration Procedure. In accordance with Section 29, this arbitrator proceeded with the hearing in his absence.

ARBITRATOR CONCURRING

  
Robert W. Cockren

DATE: July, 1990

August 16, 1990