

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Seymour & Rachel Knopf)

Case No. 90-00551

Name of Respondent(s))

Fred Steve Ginsberg)

John Warren Manning)

A.I. Schweitzer)

Schweitzer & Co.)

Heard before the members of the Arbitration Panel:

Robert Herschmann, Esq.

Public

Harry Polansky

Public

Calvin D. Cevaal

Industry

REPRESENTATION

Claimants, Seymour & Rachel Knopf ("the Knopfs"), were represented by Russell L. Forkey, Esq. of the Law Offices of Russell L. Forkey, P.A.

Respondents, Schweitzer & Co. ("Schweitzer") and A.I. Schweitzer, ("Schweitzer"), were represented by Leonard Bloom, Esq. of Nortman & Bloom, P.A.

Respondents, John Manning ("Manning") and Fred Ginsberg ("Ginsberg"), 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 22, 1990. Claimants alleged that Respondents were liable for: failing to disclose the risks involved with a trading strategy; placing Claimants in an unsuitable investment, negligently or recklessly failing to effect the necessary hedges in the futures markets; fraud; breach of fiduciary duty; violation of Florida Statutes Chapter 517; and, as it relates to Manning, Schweitzer & Co. and Schweitzer, negligent supervision. Respondents, Schweitzer & Co. and A.I. Schweitzer filed a Statement of Answer on April 27, 1990.

Respondents, Schweitzer & Co. and Schweitzer, denied liability and asserted the affirmative defenses of: failure to state a cause of action; estoppel; ratification; that the transactions were beyond the scope of Manning's responsibilities; failure to allege intent to defraud; Claimants were sophisticated investors and were suitable for the transactions; failure to allege causation; and failure to plead reliance.

Respondents, Schweitzer & Co. and Schweitzer, cross claimed against Ginsberg and Manning for indemnification or contribution.

Respondent, Manning filed a Statement of Answer on March 24, 1990 and alleged that when Ginsberg was no longer associated with the firm, Mr. Schweitzer assumed responsibility for the investments; Schweitzer was neglectful and irresponsible in protecting the investments of the Claimants; and Manning was merely an introducing party with no responsibility for activities pertaining to this account.

Respondent, Ginsberg failed to file an Answer but appeared at the hearing to defend and denied all allegations of wrongdoing.

RELIEF REQUESTED

Claimants requested damages of between \$50,000.00 and \$100,000.00, including a reasonable return on their investment, plus costs.

Respondents, Schweitzer & Co. and A.I. Schweitzer, requested dismissal of the claim and cross claimed against Ginsberg and Manning for indemnification.

Respondents, Ginsberg and Manning, requested dismissal of the claim and cross claim.

AWARD

On December 18, 1990, May 22 & 23 and August 13 & 14, 1991, in Fort Lauderdale, Florida, during hearings lasting 11 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, on February 12, 1990 and by Respondents, A.I. Schweitzer on April 12, 1990 and Manning on April 19, 1990 and signed on April 12, 1990 by A.I. Schweitzer on behalf of Respondent, Schweitzer & Co., and not signed by Respondent, Ginsberg, as required by Sections 12 and 25 of the Code.

After considering the pleadings, the testimony and the evidence presented at the hearing, the 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. Respondents, Schweitzer & Co. and A.I. Schweitzer, are found liable jointly and severally, and shall pay to the Claimants the amount of \$14,310.00 inclusive of interest.

3. Respondent, Ginsberg, is found liable and shall pay to the Claimants the amount of \$7,155.00 inclusive of interest.

4. Respondent, Manning, is found liable and shall pay to the Claimants the amount of \$3,937.00 inclusive of interest.

5. Claimants' request for costs is denied.

6. Cross/Respondents, Ginsberg and Manning, are found not liable to Cross/Claimants, Schweitzer & Co. and A.I. Schweitzer, and therefor, all cross/claims against them are hereby dismissed.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,800.00 (1 pre-hearing conference x \$300.00 plus 11 sessions x \$500.00 per session). Claimants are hereby assessed \$1,933.33 for which the NASD shall retain the \$350.00 previously deposited in partial satisfaction thereof. Respondent, Ginsberg, is hereby assessed \$1,933.33 payable to the National Association of Securities Dealers, Inc. Respondents, Schweitzer & Co. and A.I. Schweitzer, are hereby assessed \$1,933.33 payable to the NASD, Inc.

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

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

OTHER ISSUES

None.

/s/
Robert Herschmann, Esq.

/s/
Harry Polansky

/s/
Calvin D. Cevaai

Date of Decision: September 16, 1991