

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)
)
 Name of Claimant(s))
)
 Earl and Sharon Dorfman)
)
)
)
 Name of Respondent(s))
)
 James A. Barry)
 Barry Financial Service)
 Asset Management Corporation)
)
)

Case NO. 90-00601

Heard before the members of the Arbitration Panel:

Mryon Dunay, Esq.
Elizabeth L. Clark
Robert H. Hagan

Public
Public
Industry

REPRESENTATION

Claimants, Earl and Sharon Dorfman ("Dorfman"), were represented by Arnold Y. Steinberg, Esq. of Arnold Y. Steinberg, P.A.

Respondents, James A. Barry ("Barry"), Barry Financial Services ("BFS") and Asset Management Corporation ("AMC"), were represented by Allan M. Lerner, Esq. of Lerner & Pearce, P.A.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on February 28, 1990. Claimants alleged that Respondents made misrepresentations of and omitted to state material facts; that Claimants followed all recommendations of Respondents and relied wholly on Respondents' advice including the purchase of mutual funds, joining the Inner Circle Club, and buying the market timing service; that Claimants were unsophisticated investors who granted complete discretion over their accounts to Respondents; that Respondents' actions constituted negligent supervision, fraud and deceit, breach of fiduciary duty and negligence, and violation of Sections 10(b) and 20(a) of the 1934 Exchange Act and Section 517.301, Florida Statutes.

Respondents filed a Statement of Answer with the NASD on April 27, 1991. Respondents denied all allegations of wrongdoing and alleged that Claimants were fully aware from the seminar and radio broadcasts of Barry's investment philosophy and strategy; that all recommendations were based on past

when opening the account and fraudulently used Bazarte to secure for herself a portfolio that was not rightfully hers; Brush was informed about the risks of trading options; Brush was suitable for the transactions; all trades were authorized; and otherwise denied liability.

Respondent, Hampton, failed to file an Answer and did not appear at the hearing to defend.

RELIEF REQUESTED

Claimant requested damages in the amount of \$88,189.50, inclusive of interest, plus punitive damages in the amount of \$1,000,000.00, plus attorney's fees and other costs.

Respondent, Southwest, requested dismissal of the claim plus attorney's fees. Respondent, Bazarte, requested dismissal of the claim plus costs and Respondent, Hampton, failed to file an answer and did not appear at the hearing to defend.

AWARD

On November 27 and 28, 1990, and May 8, 9 and 10, 1991, in Fort Lauderdale, Florida, during a hearing lasting ten (10) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, on October 4, 1989, and signed on December 19, 1989 by J. Ralph Ewing on behalf of Respondent, Southwest, and by Respondent, Bazarte, on January 31, 1990, and not signed by Respondent, Hampton, as required by Sections 12 and 25 of the Code, Respondent, Hampton, being an NASD member firm at the time this controversy arose.

After considering the pleadings, the testimony, and the evidence presented at the hearing, and Respondent, Hampton, neither appearing at the hearing nor seeking any adjournment thereof, notwithstanding its knowledge of these hearings as evidenced in the record of proceedings, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondents, Southwest and Bazarte, 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, Southwest, is found not liable and, therefore, all claims against it are hereby dismissed.
3. Respondent, Hampton, is found liable and shall pay to the Claimant the amount of \$32,216.00 inclusive of interest.
4. Respondent, Bazarte, is found liable and shall pay to the Claimant the amount of \$8,054.00 inclusive of interest.
5. Claimant's requests for attorney's fees, costs and punitive damages are denied.

6. Respondents' requests for costs and attorney's fees 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 \$10,000.00 (10 sessions x \$1,000.00 per session). Claimant is hereby assessed \$5,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof. Respondent, Hampton, is hereby assessed \$4,000.00 and Respondent, Bazarte, is hereby assessed \$1,000.00 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. Jurisdiction exists pursuant to Section 12 of the NASD, Code of Arbitration Procedure.

2. For the reasons set forth in the record of proceedings and contained in Arbitrators' Exhibit #2, this Panel finds service upon and adequate notice to Respondent, Hampton. The NASD has made every attempt to locate and serve, Hampton Securities, Inc. with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

Concurring Arbitrators' Signatures

/s/
Robert Herschmann, Esq.

/s/
Harry Polansky

/s/
Robert H. Hagan

Date of Decision: June 14, 1991