

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Charlotte Lyons as Personal)
Representative of the Estate of)
Robert S. Lyons)

Case No. 90-01281

Name of Respondent(s))

Greentree Securities Corp.)
G.K. Scott & Co. Inc.)
Robert Peter Sauer, Jr.)
David Schaum)
Bernice Lerner)

REPRESENTATION

For Claimant, Charlotte Lyons as Personal Representative ("PR") of the Estate of Robert S. Lyons ("Lyons"): William P. Doyle, Esq.

For Respondent, G. K. Scott & Co., Inc. ("GKS"): William S. Isenberg, Esq. of Latona & Isenberg.

For Respondents, David Schaum ("Schaum") and Bernice Lerner ("Lerner"): Michael R. Casey, Esq. of Casey & Molchan, P.A.

For Respondent, Robert P. Sauer, Jr. ("Sauer"): pro se.

For Respondent, Greentree Securities Corp. ("Greentree") no representative appeared at the hearing.

CASE INFORMATION

Statement of Claim filed: May 7, 1990. Claimants' Submission Agreements signed: May 3, 1990 and November 12, 1991.

Respondent, GKS', Statement of Answer with Counterclaim filed: July 3, 1990, and Submission Agreement signed by George Kevorkian on behalf of GKS on May 30, 1990.

Respondent, Sauer's, Statement of Answer filed: November 28, 1990 and Submission Agreement signed on July 11, 1990.

Respondent, Schaum's, Statement of Answer filed: July 25, 1990 and Submission Agreement signed on July 23, 1990

Respondent, Lerner's, Statement of Answer filed: March 18, 1991 and Submission Agreement signed on November 13, 1991.

Respondent, Greentree, did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code.

HEARING INFORMATION

On November 12, 13 and 14, 1991, in Fort Lauderdale, Florida, hearings lasting six (6) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents, through Sauer, made unauthorized trades in speculative securities, including penny stocks, which were unsuitable for Mr. Lyons' Keogh Retirement Plan ("Plan") account; made misrepresentations of and omitted to state material facts; churned the account; manipulated the market; and, falsified the value of the account. Claimant alleged that Respondents' actions constituted negligent supervision, fraud and violation of Securities Rule 10-b-5, SEC Rules 15c 1-7(a) and 1-2(a), Section 15(c)1 of the 1934 Exchange Act, Section 17(a) of the 1933 Securities Act, NYSE Rules 405 and 435, NASD Suitability Rule, and Sections 517.211 and .301, Florida Statutes.

Respondents denied all allegations of wrongdoing and alleged that Lyons was a sophisticated and active trader who approved every trade made in his account. Respondent, GKS, alleged that it received the account of Mr. Lyons upon transfer from Greentree and made only a limited number of trades; that Lyons has 30 years investment experience, including 10 years in options and that his investment objective was speculation.

Respondent, Lerner, alleged the affirmative defenses of failure to state a claim; estoppel, knowledge of and assumption of risks, bar by waiver, ratification and estoppel; statutory bar by 8-319 NY UCC; losses not attributable to Respondent; losses the result of Mr. Lyons' conduct; failure to mitigate; and, Respondent not guarantor of market.

Respondent, Schaum, adopted the affirmative defenses of Sauer and alleged the affirmative defenses of due diligence and good faith; understanding and assumption of risk; approval, authorization and ratification; estoppel; no proximate cause; waiver; no scienter or recklessness; failure to use due diligence; failure to use ordinary care; failure to mitigate damages; statute of limitations; and no private cause of action for rule violations alleged.

Respondent, GKS, alleged the affirmative defenses of failure to mitigate; failure to use due diligence; losses occurred before account was transferred to GKS and were caused by Lyons' own conduct; no proximate cause; bar by unclean hands; bar by comparative negligence; and, good faith.

Respondent, Sauer, alleged the affirmative defenses that Lyons had all power under the Plan; sophistication; accounts at other firms; Lyons sought risk and speculation; Lyons sought short term profit; approval of all trades; full disclosure; Sauer not responsible for spread; followed instructions; liquidation of Greentree caused decline in account; knowledge of decline;

liquidation of Greentree caused decline in account; knowledge of decline; Lyons made his own decisions; estoppel; ratification; failure to use due diligence; equal fault; statute of limitations; no private cause of action for section 517.211, Exchange Act Rules or exchange rules; no legal duty; failure to plead with particularity; failure to allege sufficient facts for fraud; and, failure to state a claim.

Respondent, GKS, filed a Counterclaim, and alleged that it is entitled to attorney's fees and costs as there is no fairly debatable claim.

RELIEF REQUESTED

Claimant requested damages in the amount of \$160,270.00 and punitive damages of \$480,810.00.

Respondents requested dismissal and costs. Respondent, GKS, counter claimed for attorney's fees and costs. Respondents Schaum, Lerner and Sauer, requested attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

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. After the death of Robert S. Lyons on October 11, 1991, Letters of Administration were executed by the Circuit Court declaring Charlotte Lyons duly qualified to act as Personal Representative. Upon receipt of a copy of said Letters of Administration, Charlotte Lyons was substituted as the party Claimant.

3. During the course of the hearing, the Claimant dismissed Beth Lerner as a party Respondent. Such dismissal was with prejudice.

AWARD

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

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed. At the conclusion of the Claimant's case, the Panel found that, from the evidence viewed in the light most favorable to the Claimant, the Claimant presented no credible evidence to substantiate the allegations enumerated in the Statement of Claim and, therefore, the Respondents' Motions to Dismiss were granted.

2. Claimant's request for punitive damages is denied.

3. Claimant/Counter Respondent is found liable, pursuant to Section 517.211, Florida Statutes, and shall pay attorneys' fees as follows:

a) to Respondent/Counter Claimant, GKS, in the amount of \$7,131.50 for the attorney's fees incurred by the law firm of Latona & Isenberg;

b) to Respondent, Schaum, in the amount of \$9,432.50 for the attorney's fees incurred by the law firm of Casey and Molchan, P.A.; and,

c) to Respondent, Lerner, in the amount of \$5,107.50 for the attorney's fees incurred by the law firm of Casey and Molchan, P.A.

4. Respondent, Sauer's, request for attorney's fees is denied.

OTHER COSTS

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$6,000.00 (six sessions x \$1,000.00). Claimant is hereby assessed \$3,000.00 for which the NASD shall retain \$1,000.00 of the amount previously deposited in partial satisfaction thereof. Respondent/Counter Claimant, GKS, is hereby assessed \$3,000.00 payable to the National Association of Securities Dealers, Inc.

2. Respondent/Counter Claimant, GKS, shall also pay the \$250.00 non-refundable filing fee which has been due and owing since the filing of GKS' counterclaim.

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

Concurring Arbitrators' Signatures

/s/
Steven N. Ainsbinder, Esq.

Public

/s/
Michael Lau

Public

/s/
Terrence W. Grant

Industry

Date of Decision: January 31, 1992