

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Charlotte Soleski

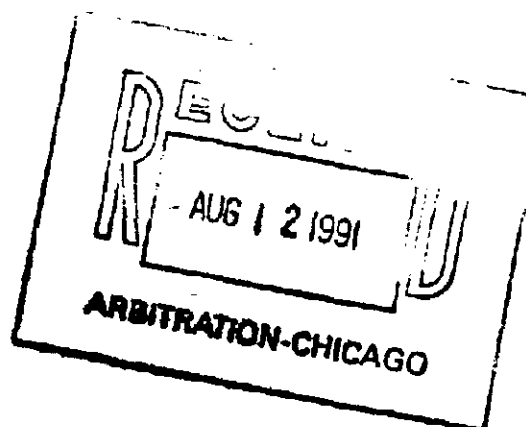
Claimant

vs.

90-01637

Randall C. Schakner, Gerald A. Horwitz and
Horwitz, Schakner & Associates, Inc.

Respondents



REPRESENTATION OF PARTIES

Claimant Charlotte Soleski was represented by Ralph A. Weber, Esq. of Kravit, Lammiman & DeBruin S.C., Milwaukee, Wisconsin. Respondent Randall C. Schakner was represented by James J. Moylan, Esq. of James J. Moylan and Associates, Ltd., Chicago, Illinois. Respondents Gerald A. Horwitz and Horwitz, Schakner & Associates, Inc. were represented by Nicholas P. Iavarone, Esq. of Bellows and Bellows, Chicago, Illinois.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about June 11, 1990, Claimant Charlotte Soleski ("Soleski") alleged Securities Fraud in violation of Section 10b-5, securities fraud in violation of Section 551.41 of the Wisconsin Statutes, securities sales by an unlicensed broker in violation of Section 551.31 of the Wisconsin Statutes, common law fraud, breach of contract, negligence, breach of fiduciary duty, violation of the NASD and CBOE rules and racketeering activity under federal law and Wisconsin State Law. The foregoing violations of law were alleged by Soleski to have been committed by Respondents Randall C. Schakner ("Schakner"), Gerald A. Horwitz ("Horwitz") and Horwitz, Schakner & Associates, Inc. ("HSA"). Soleski, a retired widow, alleged that she informed Schakner that she was an unsophisticated investor who wished to avoid risky investments. Soleski alleged that Schakner and HSA, without authorization, opened a margin account in Soleski's name. Thereafter, Soleski alleged that various unauthorized purchases or sales of S & P index stock options in both "puts" and "calls" were made in her account. Soleski alleged that over 40 transactions occurred in her account from March through October 1987 which involved more than 900 S & P index option contracts. Soleski alleged that these highly speculative transactions were totally unsuitable for her and made

solely to generate commissions for Schakner. Soleski further alleged that during the relevant period of time HSA was not a licensed broker/dealer in the state of Wisconsin and that Schakner was not a licensed securities salesperson in the State of Wisconsin. Soleski alleged she was damaged by virtue of this non registration and that Horwitz and HSA materially aided Schakner in his conduct so as to be jointly and severally liable for any damages sustained by Soleski as a consequence of Schakner's actions.

In a statement of answer filed with the NASD on or about August 15, 1990, Respondents Horwitz and HSA alleged that Soleski was familiar with options trading since she had been involved in trading options through another brokerage firm and Soleski knew that options trading presented a substantial risk of loss. It was further alleged that Soleski's son Gary, who said he resided in Illinois, would be making the trading decisions. Horwitz and HSA alleged that both Soleski and her son were in constant contact with the firm throughout the time the account was active. It was alleged that Soleski was sent confirmations and account statements and did not complain of any unauthorized trades until after the stock market crash of 1987. Horwitz and HSA denied the allegations of churning and asserted that the allegations of non registration were without merit according to the commissioner of securities for the State of Wisconsin. Horwitz and HSA filed a counter-claim against Soleski for the debit balance in her account at the time of the cessation of trading.

Soleski did not file a written reply to the counterclaim.

In a statement of answer filed with the NASD on or about May 15, 1991, Schakner adopted the Statement of answer submitted on behalf of Respondents Horwitz and HSA and asserted certain affirmative defenses. Schakner alleged that the claim failed to state a claim upon which relief could be granted, that the claim was barred by the doctrines of ratification, waiver and estoppel and that the claims were barred because all the trades in Soleski's account were authorized and entered pursuant to powers of attorney in favor of Soleski's son.

RELIEF REQUESTED

Soleski requested damages totalling \$950,000 which included claims for lost principal, lost interest, treble damages under RICO, attorney's fees and punitive damages.

OTHER ISSUES

At the hearing on June 5, 1991, the panel considered whether to accept the filing of a purported cross-claim on behalf of Respondent Schakner against Respondents Horwitz and HSA. The panel entertained argument by all counsel, considered the issue in executive session and determined not to receive the cross-claim in accordance with its authority set forth in section 39(b) of the NASD Code. The panel was also advised that Respondents Horwitz and HSA had resolved the claims against them by Soleski through a settlement on or before May 31, 1991. The panel, therefore, did not consider Horwitz or HSA to be parties to the proceeding any longer and proceeded to determine the claims of Soleski v. individual Respondent Randall C. Schakner.

PROCEDURAL MATTERS

On Wednesday and Thursday, June 5 and 6, 1991 and Wednesday, July 3, 1991 in Milwaukee, Wisconsin during a hearing lasting a total of six (6) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on July 9, 1990 by Claimant Charlotte G. Soleski, on August 6, 1990 by Gerald A. Horwitz on behalf of Respondent Horwitz, Schakner & Associates, Inc. and on August 6, 1990 by Respondent Gerald A. Horwitz. Respondent Randall C. Schakner did not file a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code. Since Schakner answered the claim, appeared at the hearing and testified he will be bound on all issues determined by the panel.

On Wednesday, June 6, 1991, at the close of the Claimant's case the Respondent moved for directed verdict on several grounds and the arbitrators directed the filing of briefs on said motion and a 3 brief briefing schedule was established.

The case was recessed to July 3, 1991. Briefs were submitted as scheduled and the arbitrators reviewed them during the recess and also reviewed the transcript of testimony submitted by the Claimant.

On July 3, 1991 the arbitrators denied the motion and directed the Respondent to put in his case. The testimony was concluded on the afternoon of said day and the parties made oral argument following which the arbitrators went into executive session.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original (s) remain on file with the NASD.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. As Soleski' claims against Horwitz, individually and HSA were resolved by settlement on or before May 31, 1991, the panel did not consider these claims and did not consider these respondents to be parties to the instant proceeding;
2. Schakner is liable for and shall pay to Soleski the sum of Fifty-One Thousand Dollars and no cents (\$51,000.00);
3. Soleski's claims for rescission and punitive or RICO damages shall be and are hereby denied and dismissed in their entirety;
4. The parties shall each bear their own costs, expenses and attorneys fees incurred in this matter; and

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and refund the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant. The NASD shall also retain the \$750.00 counterclaim filing fee paid by Respondent HSA. Respondent Schakner is assessed and shall pay to the NASD as forum fees the sum of \$5,000.00.

Dated:

Concurring Panel Members

2-8-91

[Signature]
Ewald-L. Moerke, Jr.
Presiding Chair
Public Arbitrator

Harry G. Slater, Esq.
Public Arbitrator

Jack A. Bloomfield
Industry Arbitrator

served by NASD 8.15-91

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Dated:

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Ewald L. Moerke, Jr.
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Public Arbitrator

Aug 5 - 1991

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Harry G. Slater, Esq.
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Dated:

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Presiding Chair
Public Arbitrator

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August 5, 1991

Jack A. Bloomfield
Jack A. Bloomfield
Industry Arbitrator

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