

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Adelaide & Theodore J. Lipton
Harris Scherl
Jill Meyerson

Case No. 90-01801

Name of Respondent(s)

Summit Investment Corp.
Kevin Harris

Heard before the members of the Arbitration Panel:

Edward J. Marko, Esq.
Samuel Leigh
Terrence W. Grant

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REPRESENTATION

Claimants, Adelaide Lipton, Theodore J. Lipton ("Lipton"), Harris Scherl ("Scherl") and Jill Meyerson ("Meyerson"), were represented by Paul D. Wexler, Esq. of Bragar & Wexler, P.C. Respondents, Summit Investment Corp. ("Summit") and Kevin Harris ("Harris"), were represented by D. Graham C. Clark, Jr., Esq. of Mahoney & Hagberg.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on June 25, 1990. Claimants alleged that Lipton managed three (3) accounts at Summit: A for herself and her husband, B for herself and her father, and C for her daughter; that Lipton is a recent widow with no other funds; that Respondents caused Lipton to maintain highly speculative equity securities in margin accounts that were unsuitable; that Respondents made misrepresentations of material facts; failed or refused to follow Lipton's instructions; deceived her regarding the status of her accounts; and, that Respondents' actions constituted violations of Article III, Section 2 of the NASD Rules and NYSE Rule 405, and breach of fiduciary duty.

In a Statement of Answer filed with the NASD on September 24, 1990, Respondents denied all allegations of wrongdoing and alleged that Lipton and her husband had planned for his death by transferring his account to a joint account; that Claimants wanted to retain the portfolio; that the securities

were suitable and Lipton insisted on holding them; that Mr. Lipton was a principal in a brokerage firm; that Lipton understood and assumed the risks; and; that Lipton inherited the portfolio and chose to hold the stocks.

RELIEF REQUESTED

Claimants requested damages in the amount of \$117,252.00, punitive damages of \$100,000.00 plus interest.

Respondents requested dismissal, costs, expenses and attorney's fees.

AWARD

On June 12, 1991, in Fort Lauderdale, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, Lipton on June 8, 1990, Scherl on May 30, 1990 and Meyerson on June 18, 1990, and signed by Harris on February 25, 1991 and by Robert E. Abrams on behalf of Summit on February 25, 1991.

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, Summit and Harris, are found not liable and, therefore, all claims against them are hereby dismissed.
3. Respondents' requests for attorney's fees, costs and expenses 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 \$1,500.00 (two sessions x \$750.00). Claimants are hereby assessed \$750.00 for which the NASD shall retain the \$750.00 previously deposited in full satisfaction thereof. Respondents, Summit and Harris, are hereby assessed \$750.00, jointly and severally, for which the NASD shall retain the \$750.00 postponement fee deposit in full satisfaction thereof.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

Respondents moved to dismiss the claims regarding accounts B and C. At the conclusion of the presentation of Claimants' evidence, that motion was granted.

Concurring Arbitrators' Signature



Edward J. Marko, Esq.



Samuel Leigh, Esq.



Terrence W. Grant

Date of Decision: June 20, 1991