

NATIONAL ASSOCIATION OF SECURITIES DEALERS

N.A.S.D. AWARD

Arbitration

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Robert Blitz)

Esther Blitz)

Name of Respondent(s))

Kenneth W. Brown)

J. W. Charles, Inc.)

Case No. 90-02071

REPRESENTATION

For Claimant, Robert and Esther Blitz ("Blitz"): Russell L. Forkay, Esq. of the Law Offices of Russell Forkay.

For Respondent, J.W. Charles Securities, Inc. ("J.W. Charles"): Charles Scarlett, Esq. of J.W. Charles.

Respondent, Ken Brown ("Brown") was represented by Gail Aird of Securities Arbitration Network Group, Inc. for the purpose of requesting a postponement and was otherwise pro se.

CASE INFORMATION

Statement of Claim filed: July 26, 1990 and amended April 10, 1991.
Claimants' Submission Agreements signed: July 20, 1990.

Respondents' Brown and J.W. Charles, Statements of Answer filed: July 26, 1991 and November 21 1990 respectively and amended by Brown on August 28, 1991. Respondents' Submission agreements signed by Brown on November 21, 1990, and by Charles Scarlett, Esq. on behalf of J.W. Charles on July 24, 1991.

HEARING INFORMATION

On February 28, 1992, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimants, alleged that Respondents were liable for: breach of contract; Brown not being properly licensed as an account executive for J.W. Charles; and violation of Florida Statutes. Claimants alleged that Brown misrepresented the effectiveness of a timing program he would implement which

was supposed to generate a sell signal in the event the value of a position in certain stocks decreased by 10%.

Respondent, Brown, denied all allegations of wrongdoing and alleged that Claimants were advised of the volatility of the market place and the securability of the stock owned by Claimants in relation to the timing program; the investments were consistent with Claimants' objectives; no discretionary trades were executed by Brown; Brown advised Claimants that their investment strategy was not in their best interest; and market conditions were the sole cause of Claimants' losses.

Respondent, Brown, alleged the affirmative defenses of lack of proximate cause; compliance with all applicable guidelines and regulations; authorization and ratification; and the losses were due to market conditions and unforeseeable changes in the financial positions of certain companies.

RELIEF REQUESTED

Claimants requested damages of approximately \$40,815.00 plus interest costs and such other relief as the Panel deems appropriate.

Respondent, Brown, requested dismissal of the claim plus costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent, Brown, appeared at the hearing and requested a postponement thereof. This Panel, having found that sufficient cause to postpone the hearing was not shown, denied Respondent, Brown's, request.

2. Subsequent to the denial of the postponement request, Respondent, Brown, left the hearing after being advised that the hearing would continue. Pursuant to Section 29 of the NASD Code of Arbitration Procedure this Panel proceeded with the arbitration of the controversy.

3. Respondent, Brown, thereafter filed a Motion to Reopen the hearing which was denied on March 26, 1992.

4. Respondent, J.W. Charles, settled the claim against it with Claimant and was, therefore, dismissed from this matter prior to the hearing.

AWARD

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. Respondent, Brown, is found liable and shall pay to the Claimants the amount of \$81,226.05, inclusive of interest.

2. Simultaneous with the payment of the amount specified in paragraph (1) above, Claimants shall deliver to, or execute any documents necessary to, transfer all their right, title, and interest of 500 shares of ARIK

Corporation, 300 shares of TRC Companies, Inc. 500 shares of Concurrent Computer Corp., and 1 Seacoast Florida Utilities Auth WTS 0% Coupon to Respondent, Brown.

OTHER COSTS

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

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (two sessions x \$400.00). Respondent, Brown, is hereby assessed \$800.00, \$400.00 of which shall be paid directly to the Claimants. The National Association of Securities Dealers, Inc. shall retain the \$400.00 previously deposited by the Claimants and the \$400.00 previously deposited by Respondent, Brown, for the postponement request which was denied in full satisfaction of such fees.

Concurring Arbitrators Signatures

/s/
Myron Dunay, Esq.

Public

/s/
Marcy A. Lewis, Esq.

Industry

/s/
Steven D. Elias, Esq.

Public

Date of Decision: June 4, 1992