

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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))

Ronnie Cohen)

Case No. 90-02510

Name of Respondent(s))

Marvin Herman)

Michael Novak)

Heard before the arbitrator:

Randy R. Freedman, Esq.

Public

REPRESENTATION

Claimant, Ronnie Cohen ("Cohen"), was represented by Howard N. Kahn, Esq. of Atlas, Pearlman & Trop, P.A.

Respondent, Marvin Herman ("Herman"), was represented by Arnold Y. Steinberg, Esq. of Steinberg and Gattegno. Respondent, Michael Novak ("Novak"), was represented by Ronald Shindler, Esq. of Fowler, White, Burnett, Hurley, et al.

CASE SUMMARY

This claim was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on September 10, 1990. Claimant, Ronnie Cohen ("Cohen"), alleged that she is a single woman of limited financial means and investment experience with a primary investment objective of absolute safety of principal with a modest return; that her objectives were expressed to Respondents, Drexel, Burnham Lambert, Inc. ("DBL"), Michael Novak ("Novak"), and Marvin Herman ("Herman"), through Herman, a securities salesman employed by DBL and supervised by Novak, the branch office manager; that Respondents made misrepresentations of and omitted to state material facts; recommended and sold to Claimant unsuitable securities in limited partnerships; that Respondents' actions constituted fraud, negligence, negligent safekeeping and investment, negligent supervision, negligent retention, breach of fiduciary duty, unsuitability, and violation of Section 10(b) of the 1934 Exchange Act and Section 517.301, Florida Statutes.

In Statement of Answers filed with the NASD on November 21, 1990 by Respondent, Herman, and on December 20, 1990 by Respondent, Novak, Respondents denied all allegations of wrongdoing and alleged that Claimant had substantial unreported income; had prior investment experience including speculative investments, as represented in writing by Claimant; that Claimant's income and net worth made her suitable for the investments; that her objectives were speculation and income; that Claimant received a prospectus for each investment and was fully advised of the risks; and, that Novak and Herman conducted themselves in accord with all applicable rules, regulations and standards.

Respondent, Novak, alleged the affirmative defenses of failure to state a claim; statute of limitations; failure to exercise due diligence; transactions requested by Claimant; good faith; failure to mitigate damages; bar by ratification, estoppel, waiver and laches; no proximate cause; no reliance or entitlement to rely; comparative negligence; and, assumption of risk.

Respondent, Herman, on November 21, 1990, filed a counterclaim and crossclaim against Novak and third party claim against the limited partnerships. The crossclaim was withdrawn prior to hearing and the third party claim was withdrawn at the hearing. Respondent, Novak, filed a crossclaim against Herman on December 20, 1990, which was withdrawn prior to the hearing. In his counterclaim, Herman alleged that Claimant made false and fraudulent statements both in her Claim and in the documentation completed for making the subject investments; represented herself as suitable for all of the investments and waited for five (5) years to complain; and, by virtue of her actions, has caused Herman to incur costs and expenses in the defense of this matter.

Respondent, DEL, has been removed as a party due to its bankruptcy filing.

Claimant/Counter Respondent denied all allegations of wrongdoing and alleged the affirmative defenses of failure to state a claim; failure to allege fraud with sufficient particularity; bar by estoppel, waiver and unclean hands; in pari delicto; no proximate cause; and, good faith.

RELIEF REQUESTED

Claimant requested damages in the amount of \$23,000.00, interest, punitive damages, costs and attorney's fees.

Respondents, Novak and Herman, requested dismissal, costs, attorney's fees and other relief. Herman, in his counterclaim, requested attorney's fees, costs and expenses.

AWARD

On April 19 and 26, and June 20, 1991, in Fort Lauderdale, Florida, during a hearing lasting six (6) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Cohen, on May 18, 1990; by Respondent, Novak, on February 12, 1991; and, by Respondent, Herman, on April 8, 1991.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrator has 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 a conformed copy of the Award while the original remains on file with the NASD.
2. Respondents, Herman and Novak, are found not liable and, therefore, all claims against them are hereby dismissed.
3. Claimant's requests for attorney's fees, costs, and punitive damages are denied.
4. Claimant/Counter Respondent, Cohen, is found not liable and, therefore, all claims against her are hereby dismissed.
5. Respondent/Counter Claimant, Herman's 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 Arbitrator has assessed forum fees in the amount of \$1,800.00 (six sessions x \$300.00). Claimant is hereby assessed \$600.00 for which the NASD shall retain the \$300.00 previously deposited in partial satisfaction thereof. Claimant shall pay the remaining \$300.00 to the National Association of Securities Dealers, Inc. Respondent, Herman, is hereby assessed \$600.00 for which the NASD shall retain the \$600.00 previously deposited in full satisfaction thereof. Respondent, Novak, is hereby assessed \$600.00 for which the NASD shall retain the \$600.00 previously deposited in full satisfaction thereof.

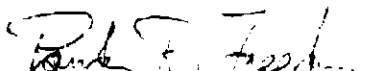
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

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

OTHER ISSUES

None.

Arbitrator's Signature


Randy R. Freedman, Esq.

Date of Decision: June 27, 1991