

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

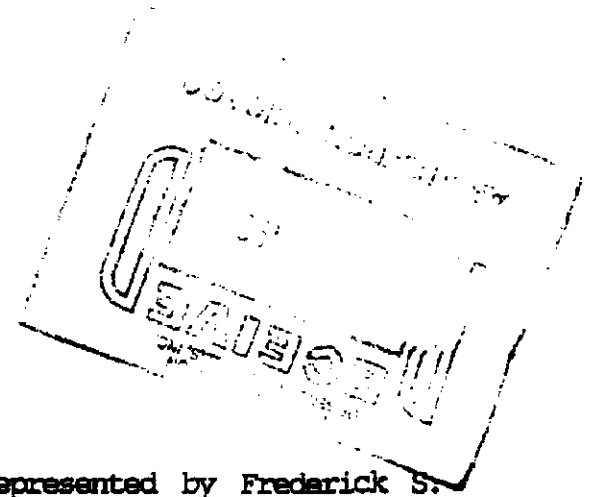
Name of Claimant(s)

Sydney S. & Regina K. Osten JT TEN

90-02626

Name of Respondent(s)

Robert Eisenberg  
Linsco/Private Ledger Corp.



REPRESENTATION

Claimants Sydney and Regina Osten were represented by Frederick S. Cassman, Esq. Respondents Robert Wisenberg and Linsco/Private Ledger Corp. were represented by Roland Santoni, Esq.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about September 18, 1990, Claimants Sydney and Regina Osten ("Osten") alleged overcharge of commissions by Respondent Robert Eisenberg ("Eisenberg") d/b/a Investor Services and Linsco/Private Ledger Corp. ("Linsco/Private"). The facts leading to this allegation are as follows: Claimants purchased, in early 1988, 78 shares of Berkshire Hathaway common stock through Respondent. The commission rates of 1% to 1.6% were agreed upon prior to the purchase. In January of 1990, Respondent advised Claimants to sell the stock. Claimants sold 60 shares that same month. The commission of 1.1% of the transaction was taken from the proceeds. Claimants made a complaint to Mr. Lemons of Respondent's firm. Mr. Lemons sent two confirmation letters. The first agreed to rebate the excess over \$130.00 to Claimants. The second letter from Linsco/Private refused the refund, stating the 1.1% commission had been agreed upon. Claimants' allege never having agreed to the 1.1% fee.

In a Statement of Answer filed with the NASD on or about January 28, 1990, Respondent Eisenberg alleged that the commission rate of 1% to 1.6% of the transaction value had been agreed to prior to Claimants purchasing the shares of Berkshire Hathaway through Respondent.

In a Statement of Answer filed with the NASD on or about January 10, 1991, Respondent Linsco/Private denied: 1) any and all wrongdoing which may have been alleged in the statement of claim; 2) that it breached any duty owed to Claimants; 3) that the claim had been properly pleaded; and 4) that Claimants were entitled to reimbursement of commissions earned by Respondent

Eisenberg. In addition, Respondent Linsco/Private asserted the following affirmative defenses:

1. The statement of claim failed to assert any claim upon which relief may be granted;
2. Claimants, by their conduct, waived any and all claims against Respondent Linsco/Private which may have been alleged in the statement of claim;
3. Claimants are estopped by their conduct from asserting any and all claims alleged in the statement of claim;
4. Claimants are barred from any recovery because they directed, authorized, consented to, acquiesced in and or ratified the transaction at issue; and
5. Respondent, Linsco/Private is not liable to the Claimants in any amount because, at all times relevant herein, Respondent acted properly and in good faith with regard to Claimants' transaction.

#### RELIEF REQUESTED

Claimants Sydney and Regina Osten requested an entry of an award in the sum of \$5,000.00 against Respondents Robert Eisenberg and Linsco/Private Ledger Corporation.

Respondent Eisenberg requested the Claimants claim be denied. Respondent Linsco/Private requested that Claimant's claim be denied in its entirety and further requested that Claimants be assessed all costs of this action, including reasonable attorney's fees and administrative expenses.

#### OTHER ISSUES

The matter of Claimants additional late witnesses was taken up and the arbitrator herein concluded that their testimony would be allowed and that all witnesses not parties hereto would wait outside the hearing room until called.

Respondent Linsco/Private made a Motion to Dismiss the claim against Respondent at the end of testimony of all parties. The arbitrator herein took the motion under advisement.

#### PROCEDURAL MATTERS

On July 25, 1991 in Omaha, Nebraska during a hearing lasting a total of one (1) session, the undersigned arbitrators heard the controversy between the parties as set forth in submission to arbitration signed on September 14, 1990 by Claimants Sydney and Regina Osten, on January 23, 1991 by Robert Eisenberg and on January 3, 1991 by Stephanie Brown on behalf of Respondents Linsco/Private Ledger Corp.

Respondents Eisenberg and Linsco/Private Ledger having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitrator on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive typed conformed copies of the award while the original remains on file with the NASD.

AWARD

The arbitrator, 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. Claimants Sydney and Regina Ostens claim for \$5,000.00 is hereby denied and dismissed;

2. Each party shall bear its own costs of arbitration including attorneys fees; and

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$150.00 deposited with the NASD by the Claimant.

Dated: 8/4/91

Loren E. Dessonville  
Loren E. Dessonville, Esq.  
Presiding Chair  
Public Arbitrator