

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration BetweenName of Claimant:

Eli Arieli

90-03237

Name of Respondents:

David Disner
Michael Breshears
BC Financial Corp.

THIRD-PARTY RESPONDENT

Larry Kerschenbaum

REPRESENTATION

For Claimant: William Greenberg, Esq., Sole Practitioner.

For Respondent David Disner ("Disner"): John McBride, Esq. of Hart & Trinen.

For Respondent Michael Breshears ("Breshears"): Mr. Breshears appeared
pro se.

For Respondent BC Financial Corp. ("BC Financial"): No attorney of record.

For Respondent Larry Kerschenbaum ("Kerschenbaum"): No attorney of record.

CASE INFORMATION

Claimant filed a Statement of Claim on November 13, 1990 and an Objection to Respondent Disner's Motion to Dismiss on November 25, 1991. Claimant executed a Submission Agreement on October 30, 1990.

Respondent Disner filed an Answer and Third Party Claim naming Respondent Kerschenbaum on April 1, 1991. Respondent Disner filed a Motion to Dismiss on August 17, 1991. Respondent Disner executed a Submission Agreement on April 1, 1991.

Respondent Breshears filed an Answer on April 1, 1991. Respondent Breshears executed a Submission Agreement on April 1, 1991.

Respondent B. C. Financial did not file an Answer nor execute a Submission Agreement as required pursuant to section one of the NASD Code of Arbitration Procedure ("Code").

Respondent Kerschenbaum did not file an Answer nor execute a Submission Agreement as required pursuant to section one of the Code.

HEARING INFORMATION

Pre-Hearing Conference: None.

Hearing Dates/Sessions: November 25, 1991 - two sessions.

Hearing Location: NASD Offices located in New York, New York.

CASE SUMMARY

Claimant alleged that on or about December 1, 1989, Respondents recommended to him the purchase of Ultraphonic stock, which he bought the next day. He alleged that on the following day he instructed Respondents to sell the stock, which they failed to do, and that Claimant suffered a loss on the stock.

Claimant further alleged that Respondent Breshears, as the branch manager of Respondent BC Financial, failed to supervise Respondent Kerschenbaum, and that Respondent Disner, as President of Respondent BC Financial, did not properly supervise his employees or comply with the proper compliance procedures.

Claimant objected to Respondent Disner's Motion to Dismiss, arguing that as the President of Respondent BC Financial, he should be held responsible for the supervision of his account.

Respondent Disner maintained that he never recommended the purchase of Ultraphonic stock to the Claimant and that he was not even aware of the Claimant's transaction until after the alleged misconduct took place. He further denied that he ever received any instructions from the Claimant to sell the stock in question. He asserted a third party claim against Respondent Kerschenbaum, the broker for the transaction in question, arguing that liability, if any, should rest solely with him. Respondent Disner filed a Motion to Dismiss, asserting that he had no knowledge of the transaction until after the alleged misconduct.

Respondent Breshears maintained that he was never the Claimant's broker and that he never recommended the stock to him. He further maintained that the Claimant advised him that he sought to sell the stock at a specific price, which the market had not reached, and that he advised the Claimant that he would need to speak with Respondent Kerschenbaum on his account.

RELIEF REQUESTED

At the hearing, Claimant requested \$18,000 in compensatory damages together with interest, costs and attorney fees. He withdrew his claim for \$73,000 in punitive damages.

Respondent Breshears requested dismissal of the claim and costs to be assessed against the Claimant.

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

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

Prior to the hearing, the arbitration panel ruled that Respondent Disner's Motion to Dismiss was denied.

Prior to the hearing, the arbitration panel ruled that Respondent Breshears would be permitted to appear and testify telephonically for the entire hearing.

Prior to the hearing, the arbitration panel ruled that two witnesses for Respondent Disner would be permitted to testify telephonically.

At the hearing, the arbitration panel made the following findings with regard to Respondent BC Financial:

In accordance with section one of the Code of Arbitration Procedure ("Code"), the panel ruled that it had jurisdiction over Respondent BC Financial;

In accordance with section 25 of the Code, Respondent BC Financial did not receive the Statement of Claim and therefore did not have an opportunity to respond;

In accordance with section 21 and section 26 of the Code, Respondent BC Financial was not given due notice of the hearing by regular and certified mail and failed to appear at the hearing;

In accordance with section 29 of the Code, the arbitration panel determined in light of the foregoing information to dismiss Respondent BC Financial without prejudice.

At the hearing, the arbitration panel made the following findings with respect to Respondent Kerschenbaum:

In accordance with section one of the Code, the panel ruled that it had jurisdiction over Respondent Kerschenbaum;

In accordance with section 25 of the Code, Respondent Kerschenbaum did not receive the Statement of Claim and therefore did not have an opportunity to respond;

In accordance with section 21 and section 26 of the Code, Respondent Kerschenbaum was not give due notice of the hearing by regular and certified mail and failed to appear at the hearing;

In accordance with Section 29 of the Code, the arbitration panel determined in light of the foregoing information to dismiss Respondent Kerschenbaum without prejudice.

At the afternoon session of the hearing, the Claimant entered into a settlement agreement with Respondent Disner, and withdrew with prejudice all claims against him. Respondent Disner then withdrew without prejudice its third party claim against Respondent Kerschenbaum.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim against Respondent Breshears is denied in its entirety; and,
2. Each side is to bear its own costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, Forum Fees of \$500.00 are assessed. This amount was computed as follows:

2 sessions x \$500.00/session - \$500.00 hearing session deposit
previously paid by Claimant = \$500.00

Respondent Breshears is to pay the sum of \$250.00 as forum fees and Respondent Disner is to pay the sum of \$250.00 as forum fees.

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

The NASD will retain the Claimant's \$150.00 non refundable claim filing fee.

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Concurring Arbitrators' Signature:

A handwritten signature in cursive script, appearing to read "L. A. Pittore", written over a horizontal line.

Lawrence A. Pittore, Esq.
Public Arbitrator/Chairperson

Date of Decision: January 3, 1992

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Concurring Arbitrators' Signature:




Seymour Kaye
Public Arbitrator

Date of Decision: January 3, 1992

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Concurring Arbitrators' Signature:

 12/14/91

Noah Sorkin, Esq.
Industry Arbitrator

Date of Decision: January 3, 1992