

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Robert H. O'Connor
Patricia O'Connor

vs.

90-03437

Name of Respondent(s)

Robert Crosby
Wedbush Morgan Securities, Inc.

REPRESENTATION

For Claimant: Michael L. Paule and Brian Lowe, Investors Arbitration Services, Inc., Woodland Hills, California

For Respondent Robert Crosby: John Torrey, Esq., Law Office of Ann A. Anderson, Woodland Hills, California

For Respondent Wedbush Morgan Securities, Inc.: Leslie M. Sullivan, Esq., Reesal, Young & Logan, Long Beach, California and Steve Howard, Esq., Milbank, Tweed, Hadley & McCloy, Los Angeles, California

CASE INFORMATION

Statement of Claim and attached Amendment to Claim filed: December 5, 1990
Amended Statement of Claim filed: August 8, 1991
Claimants' Submission Agreement signed on: November 27, 1990

Motion To Dismiss filed by Respondent Robert Crosby: April 3, 1991
Statement of Answer filed by Respondent Robert Crosby: July 12, 1991
Respondent Robert Crosby did not submit a Submission Agreement but is subject to National Association of Securities Dealers, Inc. jurisdiction in accordance with Section 12 of the Code of Arbitration Procedure.

Motion To Dismiss and Answer filed by Respondent Wedbush Morgan Securities, Inc.: October 7, 1991
Submission Agreement signed by Wedbush Morgan Securities, Inc. on: October 4, 1991

HEARING INFORMATION

Prehearing Conference Date/Sessions: None

Hearing Date/Sessions: June 17, 1992 (one session)

Hearing Location: Los Angeles, California

Hearing held for oral arguments by the parties' representatives with respect to Respondents' Motions To Dismiss.

CASE SUMMARY

Claimants alleged that Respondents 1) made unsuitable investments; 2) traded on discretion without written or verbal authority from Claimants; 3) fraudulently misrepresented the true risks of Claimants' account; 4) improperly used margin to buy and sell securities, and illegally made options purchases without Claimants' specific approval. Claimants also alleged breach of fiduciary duty, failure to supervise and fraud with respect to Claimants' account.

Respondent Robert Crosby alleged that the transactions in Claimants' account were undertaken with Claimants' consent and active participation, and were consistent with Claimants' investment objectives as communicated to and understood by Robert Crosby. Respondent Robert Crosby also filed a Motion To Dismiss alleging lack of jurisdiction and alleging that Claimants' claims are barred by applicable statutes of limitations.

Respondent Wedbush Morgan Securities, Inc. denied Claimants allegations and filed a Motion To Dismiss alleging that Wedbush Morgan Securities, Inc. was improperly named and also alleging that Claimants' claims are barred by applicable statutes of limitations.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages of \$240,000;
2. Rescission of all unsuitable transactions, as well as rescission of those other transactions which are found to be in violation of any of the Association's Rules of Fair Practice;
3. The return to Claimants of the principal amount of money deposited in all unsuitable investments, as well as the return of all monies deposited in other investments which are found to have been made in violation of the Association's Rules of Fair Practice;
4. The return to Claimants of all monies paid by them in the form of costs necessarily incurred as the result of categories one, two and three, above, including, but not necessarily limited to, the following: commissions, margin interest, and the tax liability incurred as the result of unrealized losses in Claimants' investments;

5. An amount of money equal to what the total dollar value of all Claimants' investments would have earned at the legal rate of 10% per annum, from the date of each unsuitable investment, or other investment made in violation of the Association's Rules of Fair Practice, up to the time of the Award of the Arbitrators;

6. The return to Claimants of all arbitration filing costs, consulting fees and hearing session deposits as a result of this arbitration action; and

7. Punitive damages in an amount, to be determined by the Arbitration Panel, sufficient to punish Respondents for their fraudulent conduct and willful violations of the Rules of Fair Practice, so as to set an example of Respondents and to deter such conduct in the future.

Respondent Robert Crosby requested:

1. All claims by Claimants be dismissed and that any and all forum fees be assessed against the Claimants.

Respondent Wedbush Morgan Securities, Inc. requested:

1. That Claimants take nothing from their Statement of Claims and that such claims be dismissed in their entirety.

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.

AWARD

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

1. Respondent Robert Crosby's Motion To Dismiss is granted.
2. Respondent Wedbush Morgan Securities, Inc.'s Motion To Dismiss is granted.
3. All claims by Claimants, including the claim for punitive damages, are dismissed.
4. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750 hearing session deposit previously deposited by the Claimants as an assessment of forum fees for one session.

ARBITRATION PANEL

Public/Industry

Public Arbitrator

Public Arbitrator

Industry Arbitrator


Donna M. Hostetler

Served July 15, 1992

Date of Decision: July 17, 1992