

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Gloria Berkowitz)

Case No: 90-03457

Name of Respondent(s))

OTRA Clearing, Inc.)

John Whitesides)

William Saydain)

Robert Cohen)

Nanette Gordon)

Heard before the members of the Arbitration Panel:

Michael R. Casey, Esq.

Public

Bradley S. Bailey, Esq.

Public

Douglas Delaney, Jr.

Industry

REPRESENTATION

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

Respondents, OTRA Clearing, Inc. ("OTRA"), John Whiteside ("Whiteside") and William Saydain ("Saydain"), were represented by Scott G. Monson, Esq. of OTRA. Respondents, Nanette Gordon ("Gordon") and Robert Cohen ("Cohen"), were pro se.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on December 6, 1990. Claimant alleged that her account at J.T. Moran was sold and transferred on March 19, 1990 to Wellshire Securities which cleared through OTRA; that Claimant never authorized nor approved the transfer; that Claimant endeavored to transfer her account to J. W. Charles and was successful in June 1990; that Gordon made unauthorized trades in a penny stock; that the OTRA Respondents refused to reverse the trade; that upon failure to pay, the stock was sold creating a debit balance; that quality equity securities were sold out to cover the debit; and, that the OTRA Respondents refused to break the trade because Wellshire had no funds to cover the debit. Claimant alleged that Respondents' actions constituted negligence, negligent supervision,

negligent safekeeping, negligent retention of Gordon by Cohen, breach of fiduciary duty, fraud, violation of Section 517.301, Florida Statutes, and Section 10(b) of the 1934 Exchange Act. --

Respondents, OTRA, Whitesides and Saydein, filed a Statement of Answer with the NASD on February 5, 1991. Respondents denied all allegations of wrongdoing and alleged the affirmative defenses of failure to state a claim; no acts or omissions by these Respondents; no violation or breach alleged against these Respondents; compliance with all terms and conditions of agreement with Wellshire; no proximate cause; no duty; bad faith by Claimant; and, no individual duty by Whitesides or Saydein.

RELIEF REQUESTED

Claimant requested damages in the amount of \$7,000.00, prejudgment interest, interest, punitive damages, attorney's fees and costs.

Respondents requested dismissal, costs, expenses and attorney's fees.

AWARD

On August 14 and 15, 1991, in Fort Lauderdale, Florida, during a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on September 12, 1990; by Respondents, Whitesides and Saydein, on February 6, 1991; on February 6, 1991 by Whitesides on behalf of Respondent, OTRA; and, not signed by Gordon or Cohen as required by Sections 12 and 25 of the Code.

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. The Claimant and Respondents, OTRA, Whitesides and Saydein, 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 referenced above have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.
2. Respondents, OTRA, Whitesides and Saydein, are found not liable and, therefore, all claims against them are hereby dismissed.
3. Respondents, Gordon and Cohen, are found liable, jointly and severally, for fraud and violation of Section 517.301, Florida Statutes. Respondents, Gordon and Cohen, shall pay to the Claimant the amount of \$6,941.25, plus interest at the legal rate of 12% per annum to date of Award in the amount of \$1,041.19 for a total due to the Claimant of \$7,982.44.
4. Respondents, Gordon and Cohen, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$23,947.32 for punitive damages.

5. Claimant's request for attorney's fees is denied without prejudice to seek them from a court of competent jurisdiction.

6. Respondents, OTRA, Whitesides and Saydein's, requests for costs, expenses and attorney's fees are denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,000.00 (four sessions x \$500.00). Claimant is hereby assessed \$1,000.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof. Respondent, OTRA, is hereby assessed \$1,000.00 payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

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

OTHER ISSUES

Respondents, Gordon and Cohen, did not appear to defend the claims against them. Based on the record evidence contained in the file of the NASD, the Panel finds adequate service of the claim and notice of the hearing to both Gordon and Cohen. Pursuant to Section 29 of the Code, this Award is rendered as if Respondents, Gordon and Cohen, had entered an appearance in this matter.

Concurring Arbitrators' Signatures

/s/
Michael R. Casey, Esq.

/s/
Bradley S. Bailey, Esq.

/s/
Douglas Delaney, Jr.

Date of Decision: August 29, 1991