

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Jean Litz as Personal Representative
of the Estate of Dr. Jean E. Litz

91-00143

Name of Respondent

Sidney D. Cohn

REPRESENTATION

Claimant Jean Litz as Personal Representative of the Estate of Dr. Jean E. Litz ("Claimant") appeared pro se.

For Respondent Sidney D. Cohn ("Respondent") appeared Charles M. O'Rourke, Esq., a sole practitioner located in Hempstead, New York.

CASE INFORMATION

Statement of Claim filed: January 7, 1991.

Claimant's Submission Agreement signed on: January 8, 1991.

Court Order Appointing Jean Litz as the Personal Representative of the Estate of Dr. Jean E. Litz dated: May 23, 1991.

Statement of Answer filed: June 12, 1991.

Respondent's Submission Agreement signed on: April 3, 1991.

HEARING INFORMATION

Hearing date/Sessions: September 8, 1994 - Two Sessions

The hearing was held at the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that Respondent induced her to invest in various common stocks by representing that she would not lose money and that she would have access to her money when she needed it. Claimant further alleged that Respondent omitted to disclose that the stocks he recommended were volatile and had an unreasonable risk of loss. In addition, Claimant alleged that Respondent's practices were fraudulent and deceitful and that Respondent breached the fiduciary duty he owed to her.

Respondent denied each and every allegation asserted against him in the Statement of Claim. He maintained that Claimant occasionally purchased stocks through him and that, on balance, she realized substantial capital gains which far exceeded her losses. Respondent asserted that Claimant received the prospectuses, had prior securities experience and, therefore, had knowledge of and assumed the risks of purchasing securities. Respondent maintained that he and Claimant knew each other for more than thirty years and enjoyed a personal relationship and maintained that this claim arose from motives other than the financial claims that were alleged.

RELIEF REQUESTED

Claimant requested compensatory damages of \$16,000.00 and punitive damages of \$20,000.00. Claimant further requested costs, interest, disbursements, attorney's fees and such other relief as may be just and proper.

Respondent requested that all claims against him be dismissed. In addition, Respondent requested attorney's fees, costs, expenses, and such other relief as may be just and proper.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Respondent made a motion to preclude Claimant from presenting any documents not exchanged or witnesses not identified pursuant to Section 32(c) of the N.A.S.D. Code of Arbitration Procedure which was objected to by the Claimant. The arbitration panel considered the request and ruled that it be denied. Additionally, at the hearing, Respondent made a motion to preclude Jean Litz, the personal representative of the estate of Dr. Jean E. Litz, from testifying in accordance with the New York "Dead Man Statute" (CPLR section 4519) and the Florida "Dead Man Statute" (Fla. Codes section 90.602). The arbitration

panel considered the request and ruled that it be denied with leave to re-raise the motion at the conclusion of the hearing. The Respondent did not reassert this issue to the panel.

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. All claims against the Respondent be and hereby are dismissed.
2. The Claimant's request for punitive damages be and hereby is denied.
3. Each party shall bear their respective costs, including attorney's fees, except that Respondent is liable and shall pay \$60.00 to the Claimant to reimburse the Claimant for a portion of her fees paid to the NASD.
4. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

non-refundable filing fee	\$120.00
2 hearing sessions x \$400.00	<u>\$800.00</u>
	\$920.00

The forum fees are assessed against:


1. Claimant be and hereby is liable in the sum of \$460.00 representing one half of the forum fees assessed. Claimant previously deposited the sum of \$520.00 with the NASD which shall be applied toward the forum fees assessed. Therefore, nothing is owed to the NASD by the Claimant.
2. Respondent be and hereby is liable in the sum of \$460.00 representing one half of the forum fees assessed. Respondent is liable and shall pay \$400.00 to the NASD representing the outstanding balance of the forum fees due and owing to the NASD.

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

ARBITRATORS' SIGNATURES

Murray I. Sommer, Esq.
Chairperson - Public Arbitrator

Vincent Buchanan
Industry Arbitrator



Neil J. Carey
Public Arbitrator

Date of Decision: October 7, 1994

STATE OF:

COUNTY OF: ss:

On this day , 1994, before me personally appeared **Murray I. Sommer, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF: ss:

On this day , 1994, before me personally appeared **Vincent Buchanan** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: *Connecticut*

COUNTY OF: *Fairfield* ss: *Salem*


On this *6* day *October*, 1994, before me personally appeared **Neil J. Carey** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



RICHARD D. BRUCE
NOTARY PUBLIC
MY COMMISSION EXPIRES *9-30-98*

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

ARBITRATORS' SIGNATURES

A handwritten signature in cursive script, reading "Murray I. Sommer", written over a horizontal line.

Murray I. Sommer, Esq.
Chairperson - Public Arbitrator

Vincent Buchanan
Industry Arbitrator

Neil J. Carey
Public Arbitrator

Date of Decision: October 7, 1994

STATE OF: New York

COUNTY OF: New York ss:

On this 6th day Oct, 1994, before me personally appeared Murray I. Sommer, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Mona J. Schussheim

MONA J. SCHUSSHEIM
Notary Public, State of New York
No. 31-4963765
Qualified in New York County
Commission Expires July 24, 1995

STATE OF:

COUNTY OF: ss:

On this day , 1994, before me personally appeared Vincent Buchanan known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF: ss:

On this day , 1994, before me personally appeared Neil J. Carey known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

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

ARBITRATORS' SIGNATURES

Murray I. Sommer, Esq.
Chairperson - Public Arbitrator

A handwritten signature in dark ink, appearing to read 'V. Buchanan', written over a horizontal line.

Vincent Buchanan
Industry Arbitrator

Neil J. Carey
Public Arbitrator

Date of Decision: October 7, 1994

STATE OF:

COUNTY OF: ss:

On this day , 1994, before me personally appeared Murray I. Sommer, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF: ss:

On this 5th day October, 1994, before me personally appeared Vincent Buchanan known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Deborah Sherman

DEBORAH SHERMAN
Notary Public, State of New York
No. 24-4879032
Qualified in Kings County
Comm. Expires Nov. 10, 1994

STATE OF:

COUNTY OF: ss:

On this day , 1994, before me personally appeared Neil J. Carey known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.
