

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Mildred & Eugene Kaplan
Malcolm Kaplan

91-00295

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Dean Witter Reynolds, Inc.
Leslie Lukoff
Michael Bergold
William Bunn

REPRESENTATION

For Claimants, Mildred Kaplan, Eugene Kaplan and Malcolm Kaplan ("The Kaplans"): Arnold Y. Steinberg, Esq., Boca Raton, Florida.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Scott J. Link, Esq. of Gunster, Yoakley & Stewart, P.A., West Palm Beach, Fl.

For Respondents, Dean Witter Reynolds, Inc. ("DWR"), Michael Bergold ("Bergold") and Leslie Lukoff ("Lukoff"): Peter J. Aldrich, Esq., of Kelley, Aldrich & Warren, P.A., West Palm Beach, Fl.

For Respondent, William Bunn ("Bunn"): Bradford D. Kaufman, Esq., of Steel, Hector and Davis, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: January 29, 1991. Claimants, Mildred and Eugene Kaplan's Submission Agreement signed on: February 6, 1991. Claimant Malcolm Kaplan's Submission Agreement signed on: January 7, 1994.

Statement of Answer filed by Respondent, Merrill Lynch on: June 10, 1991. Respondent, Merrill Lynch's Submission Agreement signed on: July 1, 1991 by V. James Mann on behalf of the firm.

Statement of Answer filed by Respondents, DWR, and Lukoff on: November 19, 1991. Statement of Answer filed by Respondent, Bergold on: July 12, 1993. Statement of Answer filed by Respondent, Bunn on: July 9, 1993.

HEARING INFORMATION

On July 9, 1993 and December 17, 1993, in Fort Lauderdale, Florida, in-person pre-hearing conferences lasting two sessions were conducted with full Panels.

On January 4, 5, 6, 7, and April 27, 1994, in Fort Lauderdale, Florida, hearings lasting fourteen (14) sessions were conducted.

CASE SUMMARY

Claimants, alleged that Respondents either individually or in a supervisory capacity, committed the following acts or violations of the securities laws upon them: Breach of fiduciary duty, fraud, negligence, negligent supervision, violated Section 10(b) of the Securities Exchange Act of 1934, Section 517.301 of the Florida Investors protection Statute; and that Respondents allowed Claimants to operate outside the margin requirements of DWR without notifying Claimants.

Respondents, denied all allegations of wrongdoing and alleged that in fact, and as a matter of law, Claimants understood and voluntarily assumed the risks of options trading; Claimants authorized every transaction and therefore are responsible for any losses; and, Respondents Bunn and DWR, asserted that the supervision of Claimants accounts was in accordance with industry standards and law.

RELIEF REQUESTED

Claimants requested: damages in the amount of \$1,164,000.00 representing out of pocket losses, lost investment opportunity, and profits diverted away from them. Claimants also requested an unspecified amount of punitive damages plus attorneys' fees and costs.

Respondents requested: Dismissal of all claims plus reimbursement of attorneys' fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

1. On August 13, 1992 Claimants filed a Notice of Voluntary Dismissal with prejudice with respect to Respondent, Merrill Lynch.
2. During the proceedings, Claimants voluntarily dismissed Respondent, Bergold, with prejudice.

3. During the proceedings on February 25, 1994, the Chairman of the panel, Craig Edward Stein, Esq. voluntarily recused himself from the case based upon Claimants' Motion to Recuse, to avoid any appearance of conflict.
4. The parties all agreed and stipulated on the record, to continue the hearing with only two arbitrators as provided by section 24 of the Code.
5. 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 testimony, and the evidence presented at the hearing and post-hearing submissions, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, DWR, Lukoff, and Bunn are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' requests for punitive damages, attorneys' fees and costs are hereby denied.
3. Respondents' requests for attorneys' fees and costs are hereby granted. By virtue of all parties having requested attorneys' fees and costs and no party presenting argument in opposition to the arbitrators' authority to award such fees, this panel finds that the issue was arbitrated by consent and agreement. The Panel having examined the affidavits of attorneys' fees and costs submitted by Respondents and finding said fees and costs reasonable, the panel orders the Claimants to pay Respondents, DWR and Lukoff, the amount of \$57,313.00 and to pay Respondent, Bunn, the amount of \$52,728.37.

OTHER COSTS

Other than Forum Fees detailed below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$16,000.00 (2 in-person pre-hearing conferences x \$1,000.00 plus 14 hearing sessions X \$1,000.00)

1. Claimants are hereby assessed Forum Fees in the amount of \$16,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$15,000.00.
2. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

/s/

Michael Lau
(Public Arbitrator)

/s/

Nicholas A. Natale
(Industry Arbitrator)

Date of Decision: June 1, 1994