

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Thelma Pollack

Name of Respondent(s)

Shochet Securities, Inc.
Marvin Shochet

Case No. 91-00364

REPRESENTATION

For Claimant, Thelma Pollack ("Pollack"): Dyanne E. Feinberg, Esq. of Gilbride, Heller & Brown, P.A.

For Respondents, Shochet Securities, Inc. ("SSI") and Marvin Shochet ("Shochet"): Alex J. Sabo, Esq. of Morgan Lewis & Bockius.

CASE INFORMATION

Statement of Claim filed: February 4, 1991. Claimant's Submission Agreement signed: January 30, 1991.

Respondents' Statement of Answer filed: February 25, 1991. Respondents' Submission Agreements signed: May 8, 1991 by Shochet, and by Shochet on behalf of SSI on January 14, 1992.

HEARING INFORMATION

On January 14 and 15, 1992, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that she and her husband were a retired elderly couple with minimal investment experience; that they advised Respondents, through Shochet, of their primary goal of preservation of capital with income; that Respondents, through Shochet, made misrepresentations of and omitted to state material facts; recommended and affected trades in unsuitable junk bond funds, low price equity securities, options and unsuitable trading in and out of mutual funds; churned the account; and, recommended the use of margin which was not suitable for Claimant. Claimant alleged that Respondents' actions constituted fraud, gross negligence, negligence, breach of fiduciary duty; negligent supervision and, violation of Section 517.301, Florida Statutes.

Respondents denied all allegations of wrongdoing and alleged that Claimant chose to employ aggressive strategies in the account and to accept the risks for potentially greater returns; the account was non-discretionary and all transactions were discussed with and approved by Claimant; and, Claimant was advised of all risks associated with the securities products and strategies used in the account.

Respondents alleged the affirmative defenses of statute of limitations; laches; waiver, estoppel and failure to mitigate; authorization and ratification; comparative negligence; good faith; sophistication and failure to use due diligence; assumption of risk; compliance with all industry standards and regulatory rules; knowledge of Claimant; and, waiver by failure to timely object.

RELIEF REQUESTED

Claimant requested damages of \$170,000.00, punitive damages, interest and costs.

Respondents requested dismissal.

OTHER ISSUES CONSIDERED & DECIDED

1. Subsequent to filing this Claim but prior to the hearing in this matter, Claimant's husband, David Pollack, passed away. The account, which is the subject of this arbitration, was a joint account with rights of survivorship. Therefore, Mr. Pollack was removed as a party and the case proceeded with Thelma Pollack as Claimant.

2. 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found liable, jointly and severally, and shall pay to the Claimant the amount \$27,423.72, inclusive of interest.
2. Respondents are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$7,500.00 for attorney's fees pursuant to Section 517.211, Florida Statutes.
3. Claimant's request for punitive damages is denied.

OTHER COSTS

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (four sessions x \$750.00). Respondents are hereby assessed \$3,000.00, jointly and severally, \$750.00 of which shall be paid directly to the Claimant, and \$2,250.00 of which shall be paid to the National Association of Securities Dealers, Inc. The NASD shall retain all fees deposited by Claimant.

2. The Panel further directs the Respondents, jointly and severally, to reimburse the Claimant for the \$200.00 non-refundable filing fee.

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

Concurring Arbitrators' Signatures

/s/
Mitchell A. Yelen, Esq.

Public

/s/
Ronald Thomas Spann, Esq.

Public

/s/
Paul E. Barr

Industry

Date of Decision: January 28, 1992