

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
)	
Martin A. Chira)	
)	Case No. 91-00966
)	
<u>Name of Respondent(s)</u>)	
)	
Ross Little)	
J.W. Charles Securities, Inc.)	
)	

REPRESENTATION

For Claimant, Martin A. Chira ("Chira"): Michael D. Harris, Esq. of Lewis, Vegosen and Rosenbach, P.A.

For Respondents, J.W. Charles Securities, Inc. ("JWC") and Ross Little ("Little"): Charles E. Scarlett, Esq. of JWC.

CASE INFORMATION

Statement of Claim filed: March 26, 1991. Claimant's Submission Agreement signed: March 6, 1991.

Respondents' Joint Statement of Answer filed: June 6, 1991. Respondents' Submission Agreements signed by Little on July 5, 1991, and by Charles Scarlett on behalf of JWC on June 6, 1991.

HEARING INFORMATION

On December 19, 1991 and November 10, 1992, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents, through Little, made misrepresentations of and omitted to state material facts; improperly induced the purchase of unsuitable municipal bonds and equity securities; knew that Claimant was a retired businessman seeking income; that Respondent, JWC, violated SEC rules by making improper markups in municipal bonds; that Respondents' conduct constituted fraud, breach of fiduciary duty, negligence, and a violation of Section 517.301, Florida Statutes; and, that Claimant lost \$66,000.00 as a result of Respondents' actions.

Respondents denied all allegations of wrongdoing and alleged that Claimant was a knowledgeable sophisticated investor whose investment objectives included growth and speculation; that Claimant sought out Little and asked to

purchase a specific municipal bond; that Claimant sought out additional municipal bond recommendations from Little to purchase on margin; that the bonds were rated BBB or "investment grade"; that Little kept Claimant regularly informed of the value and decline in value of the bonds; and, that Claimant elected to keep the bonds, against the advice of Little, in hopes they would come back.

Respondents alleged the affirmative defenses of failure to state a claim; justifiable reliance on S&P and First Executive's representations; suitability; sophistication of Claimant; disclosure of risks; failure to mitigate; and, failure to use due diligence.

Respondent, JWC, filed a counterclaim and alleged that Claimant opened a margin account with JWC; was advised of all risks in investing on margin; and, failed to meet a margin call resulting in liquidation of his account to meet the call, creating a debit balance in the account.

Claimant denied all liability for claims in the Counterclaim.

RELIEF REQUESTED

Claimant requested damages in the amount of \$66,000.00.

Respondents requested dismissal of the Claim. JWC requested damages on the Counterclaim in the amount of \$47,393.00, interest, attorney's fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

1. Claimant made an oral Motion to Amend Claim at the beginning of the hearing on December 19, 1991, to add a theory of recovery for improper markups in violation of SEC rules. The Panel granted the Motion with the provision that Respondent would be permitted to call an expert witness on an additional day of hearing in order to eliminate any potential prejudice from the amendment.

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

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.

2. Claimant/Counter Respondent, Chira, is found liable and shall pay to the Respondent/Counter Claimant, JWC, the amount of debit balance in the account, in the amount of \$53,720.00, inclusive of interest to date.

3. Respondents' requests for attorney's fees and costs are denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

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).

2. Claimant is hereby assessed \$2,000.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$1,250.00. Of that amount, \$600.00 shall be paid directly to JWC (in reimbursement for the \$600.00 session deposit made by it) and \$650.00 shall be paid to the National Association of Securities Dealers, Inc.

3. The NASD shall retain the \$150.00 filing fee paid by the Claimant. The NASD shall also retain the \$500.00 filing fee paid by the JWC and the \$600.00 session deposit paid by JWC, which shall be reimbursed as set forth above.

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

Concurring Arbitrators' Signatures

/s/
Arthur J. Leibell, Esq.

Public

/s/
David Unterberg, Esq.

Public

/s/
Terrence W. Grant

Industry

Date of Decision: November 23, 1992