

N.A.S.D. AWARD**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Nathan Fisher

91-01064

Name of Respondents

Donald & Company
Michael Dominkowitz

REPRESENTATION

For Claimant Nathan Fisher ("Claimant"): R. Jeffrey More, Esq. of the law firm Coleman & Rhine.

For Respondents Donald & Company ("Donald & Co.") and Michael Dominkowitz ("Dominkowitz"): Charles M. O'Rourke, Attorney at Law.

CASE INFORMATION

Statement of Claim filed: April 16, 1991.

Amended Statement of Claim filed: April 16, 1992.

Claimant's Submission Agreement signed on: April 15, 1991.

Joint Statement of Answer filed by Donald & Co. and Dominkowitz (collectively referred to as "Respondents") on: August 2, 1991.

Donald & Co's Submission Agreement signed on: July 31, 1991.

Dominkowitz's Submission Agreement signed on: July 31, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: May 5, 1992 - two sessions

Hearing Location: NASD Office New York, New York

CASE SUMMARY

Claimant alleged that Dominkowitz was instructed not to place a trade for Claimant unless the purchase and sell orders could be done at the same time and in a manner that allowed Claimant to receive the dividends from the trade. Claimant alleged that if his dividend capture strategy could not be met then Respondents had no authority to place the trades. Claimant alleged that Respondents through recklessness, negligence or lack of professional care, failed to inform Claimant for months that his strategy was flawed because it did not permit Claimant to net or "arbitrage" the dividend. Claimant alleged that it was Respondents duty to inform Claimant earlier that his strategy could not work.

Claimant alleged Respondents sold him an unsuitable new issue named Berger Holdings, Ltd ("Berger") without either warning Claimant of the risks or delivering to Claimant a prospectus. Claimant alleged that Dominkowitz assured him that Dominkowitz would personally guarantee to Claimant against losses in Berger. Claimant alleged that material information regarding Berger was never disclosed and that material misrepresentations were made to him to induce him to purchase Berger. Claimant alleged that due to Respondents wrongful conduct he suffered losses. Claimant alleged that immediately after he purchased Berger he instructed Dominkowitz to sell Berger, but his instructions were not executed.

Respondents maintained that Claimant was an experienced and sophisticated investor who sought to employ a strategy to maximize his ability to receive dividends. Respondents denied each and every allegation alleged by Claimant and specifically maintained that all trades were authorized. Respondents maintained that at all times Claimant controlled his account and "called the shots". Respondents maintained that rather than admit that his strategy did not work, he seeks to shift the blame to Respondents.

Respondents maintained Dominkowitz never guaranteed the performance of Berger to the Claimant and that Claimant was sent the prospectus on several occasions. Respondents maintained that Dominkowitz fully disclosed all material information regarding Berger to Claimant and did not withhold disclosing material information. Respondents maintained that Claimant never placed a sell order for Berger and that Claimant failed to mitigate his damages in Berger. Respondents further maintained that Claimant failed to complain in a timely fashion. Respondents maintained that all orders placed by Claimant were properly and promptly executed.

RELIEF REQUESTED

Claimant requested in his original statement of claim compensatory damages of \$60,000 trebled to \$180,000, plus legal fees. Claimant in his amended statement of claim requested that the purchase of Berger Holdings, Ltd be rescinded and that his purchase price plus interest be returned that

commissions paid and trading losses be returned, that Claimant be awarded appropriate exemplary damages plus costs, expenses and reasonable attorneys' fees.

Respondents requested that the Claimant's claims be dismissed in their entirety and that an award be rendered in favor of Respondents together with costs, expenses and reasonable attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

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 original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Donald & Company Securities, Inc. is liable to the Claimant and shall pay to the Claimant the sum of Twenty Five Thousand and 00/100 Dollars (\$25,000.00); no interest is awarded on this amount.
2. That all other claims asserted are denied in their entirety.
3. That each of the parties shall bear their costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fee(s) are assessed:

That forum fees shall be split between the Claimant and Donald & Company. There were two hearing sessions conducted in this matter at \$750 per session so that the Claimant is assessed forum fees of \$750 but is entitled to offset this amount with his hearing session deposit of \$750 so that no monies are due from Claimant. Donald & Company is assessed forum fees in the amount of \$750.00.

PAGE 4
AWARD 91-01064

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

Concurring Arbitrators' Signatures
Name

Public Arbitrator-Chairperson

Public Arbitrator

Industry Arbitrator

_____/s/_____
Irving Gindick

Date of Decision: May 6, 1992