

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ann Heath,
Peggy L. Schmidt, and
Gordon C. Schmidt

No. 91-01711

Name of Respondents

Richard Stern, Trustee for the
Stern Bros. Liquidating Trust,
Rodman & Renshaw,
Bruce Rosenbaum,
Franklin Acquisition Co., and
LM Consolidated Financial Corp.,
f/k/a Stern Bros. & Co.

REPRESENTATION OF PARTIES

For Claimants: Diane A. Nygaard, Esq., and John Miller, Esq. of
Nygaard & Associates, Overland Park, Kansas.

For Respondent Rodman & Renshaw and Bruce Rosenbaum: Eric S.
Rein, Esq. of Schwartz, Cooper, Kolb & Gaynor.

For Respondents Richard Stern, Trustee for the Stern Bros.
Liquidating Trust, LM Consolidated Financial Corp., f/k/a Stern
Bros. & Co., and Franklin Acquisition Corp.: Major W. Park, Jr.,
Esq., and Craig Wilson, Esq. of Gage & Tucker, Kansas City,
Missouri.

CASE INFORMATION

Statement of Claim filed: June 4, 1991.

Claimant, Gordon Schmidt's Submission Agreement signed on:
April 26, 1991.

Claimant, Ann Heath's Submission Agreement signed on: April 26, 1991.

Submission agreement of Debra Drew signed on: May 22, 1991.

Submission Agreement of Michael Heath signed on: May 24, 1991.

Statement of Answer filed by Respondent, Rodman & Renshaw, Inc. on: August 21, 1991.

Respondent Rodman & Renshaw, Inc.'s Submission Agreement signed on: August 19, 1991.

Statement of Answer filed by Respondents, Richard Stern, Trustee for the Stern Bros. Liquidating Trust, LM Consolidated Financial Corp., f/k/a Stern Bros. & Co., and Franklin Acquisition Corp. on: August 29, 1991.

Respondent LM Consolidated Financial Corp.'s Submission Agreement signed on: August 20, 1991.

Respondent Richard Stern's, Trustee of the Stern Bros. Liquidating Trust, Submission Agreement signed on: August 20, 1991.

The NASD does not have any evidence that Respondent Franklin Acquisition Corp. has filed a Submission to Arbitration.

Statement of Answer filed by Respondent, Bruce Rosenbaum on: August 20, 1991.

Respondent, Bruce Rosenbaum's Submission Agreement signed on: August 14, 1991.

Amended Statement of Claim filed on or about: April 27, 1992.

Response to Motion to Amend filed by Respondents Richard Stern, Trustee for the Stern Bros. Liquidating Trust, Franklin Acquisition Co., and LM Consolidated Financial Corp. on: May 7, 1992.

HEARING INFORMATION

Pre-Hearing conference held: May 8, 1992. One (1) session.

Hearing dates: June 1, 1992. Two (2) sessions.

June 2, 1992. Two (2) sessions.

June 26, 1992. Two (2) sessions.

Hearing Location: Kansas City, Missouri.

CASE SUMMARY

Claimants, Ann Heath ("Heath"), and Gordon C. Schmidt and Peggy

L. Schmidt (the "Schmidts") alleged breach of fiduciary duty, breach of contract, unsuitability, churning, lack of supervision, fraud, misrepresentations and omissions, violation of Sections 10 and 20 of the 1934 Securities Exchange Act, the Missouri Securities Act, RICO, and negligence by Respondents, Bruce Rosenbaum ("Rosenbaum"), Rodman & Renshaw, Inc. ("RR"), and Stern Brothers n/k/a LM Consolidated Financial Corp. ("LMC"). The allegations arose from trades in the following securities: SEEQ Technologies stock; Mosinee Paper stock; Space Microwave stock; Network Securities stock; Innovative Software stock; Nuveen Unit Trust; First Trust Insured and Missouri Housing Development Mortgage Revenue Bonds; Convergent Technology stock; Optical Coating Labs; Reflectone; Detroit Edison; LSI Logic Corp. stock; Toys Plus stock; Ramtek stock; and Ramtek convertible debentures. The trades in the aforementioned securities took place over a period of time between 1985 and 1988. Heath and the Schmidts alleged that safety of principle was of paramount importance. Heath and the Schmidts also alleged that they were constantly misled about the nature of the investments made for them, and also that they were unsophisticated investors who relied solely on the advice given by Rosenbaum.

In its Statement of Answer, RR denied the allegations made in the Statement of Claim. RR asserted the following defenses in relation to Heath's and the Schmidts' claims:

1. Heath had an aggressive investment strategy, and had been trading in speculative stocks for at least two (2) years prior to the transfer of her account to RR.

2. Heath did not trade any securities transferred from LMC, except for Ramtek bands.

3. Heath is only entitled to liquidated damages. Unrealized losses are too speculative to afford any recovery.

4. Heath's account was non-discretionary, and RR's only obligation was to sell the securities when authorized. If Heath never instructed RR to sell, RR did not breach any duty, and cannot be liable for Heath maintaining her position.

5. Heath received monthly account statements and confirmations when any trade was made, which indicated the commissions charged. Heath never objected to the trades or commissions. Heath is precluded from recovering on the basis of the doctrines of ratification, waiver, and estoppel. In addition, Heath's fraud claim under Rule 10 (b) (5) is time barred since it was not raised within one year after discovery of the facts constituting the alleged violation.

6. The Schmidts were experienced investors. Their investment objective was trading profits and they were to make their own investment decisions.

7. RR is not responsible for what occurred in the securities market in relation to the Schmidts' securities during October of 1987, especially less than one month after the account had been transferred.

8. The margin call in October of 1987, was the result of the October crash and made pursuant to the margin account agreement. RR cannot be responsible for the Schmidts' decision to trade on margin where they were fully appraised of the risks.

9. Similar to Heath, the Schmidts received written confirmations and monthly account statements and never objected to the trades made or commissions charged. The Schmidts waited two and one-half (2 1/2) years to file a claim. The Schmidts are precluded from recovering on the basis of the doctrines of ratification, waiver, and estoppel. In addition, any claim founded on fraud under Rule 10 (b) (5) is time barred since it was not raised within one (1) year of discovery of the alleged violation.

For their Statement of Answer, Richard Stern, Trustee of the Stern Bros. Liquidating Trust, Franklin Acquisition Co., and LM Consolidated Financial Corp., f/k/a Stern Brothers, ("LMC") denied the allegations made in the Statement of Claim. In addition, LMC asserted the following defenses to Heath's and the Schmidts' claims:

1. The claims of Heath and the Schmidts for violations of Sections 10 and 20 of the 1934 Securities Exchange Act and the Missouri Securities Act, are time barred by Section 9e of the 1934 Act, and Section 409.411, R.S. Mo. 1980.

2. Heath and the Schmidts seek damages for emotional distress, anguish and worry, the principles of comparative fault as adopted in Missouri should apply to such claims and damages.

3. Heath and the Schmidts seek to recover punitive damages, such an award violates the due process of the Constitutions of the United States and the State of Missouri.

4. Heath had indicated that her investment objectives were more toward speculation for growth purposes than for tax exempt income or income. Heath's account was not a discretionary account and all relevant investments made in the account from its inception at LMC were done with Heath's consent and approval.

5. Heath made no complaint to LMC of any trading activity during the time the account existed up until her lawyer contacted LMC in January 1991, requesting information on the account. Heath's silence for over three years constitutes ratification of the transactions and estops her from claiming that such transactions were unsuitable or constituted churning, or involved any fraudulent representation.

6. In April of 1988, the action of Griffin, et al. v. Ramtek Corporation, et al., had been filed in the United States District Court, Northern District of California, Civil Action No. C88-20195-JW. Plaintiffs represent all of those persons and entities who purchased either Ramtek debentures or common stock at any time between October 28, 1986 and April 5, 1988. On May 2, 1991, LMC was advised by order declaring a defendant class constituting all underwriters, which includes Stern Brothers, now LM Consolidated Financial Corp. LMC did not elect to opt out of the defendant class. On information and belief, LMC asserted the Heath and the Schmidts had not opted out of the plaintiff's class, and, therefore, their claims against LMC relating to any losses arising out of the purchase and/or sale of Ramtek securities is the subject matter of existing litigation between the parties and is not an appropriate or proper subject for arbitration in this proceeding.

7. The Schmidts' investment objectives were speculation, growth, income, safety of principal, and tax exempt income.

8. The Schmidts had never made a complaint to LMC or Rosenbaum concerning the trades or trading activity or the securities invested in by the Schmidts prior to the service of their Statement of Claim. The Schmidts by their conduct ratified the transactions and they are estopped from now claiming that the transactions were unsuitable or constituted churning or involved any fraudulent representations.

9. The purchase of Ramtek securities was not an unsuitable activity in the Schmidts' account.

10. Nothing that was said or done in relation to the Schmidts' account while it was at LMC resulted in the October, 1987 price drop and resultant margin call.

For his Statement of Answer, Rosenbaum denied the allegations contained in the Statement of Claim. Rosenbaum asserted that at no time had there been any transaction conducted by himself, or anyone else, without the full knowledge and verbal instructions of the claimants. Rosenbaum alleged that at all times he had acted in good faith and never made any misrepresentations to Heath or the Schmidts. Rosenbaum also alleged that the Schmidts had been experienced investors prior to opening their account at LMC.

In their Amended Statement of Claim, Heath and the Schmidts re-asserted those allegations contained in their original Statement of Claim. Heath and the Schmidts also added a claim under the Missouri Merchandising Practices Act. In addition, all of the allegations were associated with the trades in Ramtek securities.

RELIEF REQUESTED

Heath requested an award of the following against LMC:

1. Losses of \$3,990.40 on securities the broker sold her at LMC.
2. Margin interest expense of \$1,039.16.
3. Approximately \$40,000.00 - \$60,000.00 in commissions.

Heath requested an award of the following against RR:

1. \$13,360.75 in losses on unsuitable securities, and unrealized losses of \$15,929.48 on Ramtek debentures, and \$8,626.00 lost on Reflectone.
2. \$1,514.08 in margin interest.
3. \$40,000.00 in commissions.

Heath requested an award of the following against LMC and RR:

1. \$51,235.58 in losses on securities transferred from LMC to RR at Rosenbaum's urging.
2. Unrealized losses on Ramtek securities purchased at LMC totalling \$57,205.76 which had been actively managed by Rosenbaum at both firms.

Heath also requested:

1. Losses incurred in the accounts for the benefit of her grandchildren.
2. Full compensation for financial losses and emotional suffering, attorneys' fees, costs of this proceeding, interest, punitive damages, and treble damages in amounts to be presented at the hearing.

The Schmidts requested the panel to compensate them as follows:

1. To restore the \$111,523.14 loss due to the Rosenbaum's excessive and unsuitable margin trading in Ramtek stocks and debentures.
2. For all commissions, mark ups, mark downs and other fees paid the Respondents.
3. For the \$9,661.26 of margin interest paid respondents.

4. To provide them further compensation for the loss of their real property.

5. To compensate them for the anguish, distress and worry caused them by the Respondents' unprincipled greed in mishandling their account.

6. For punitive and treble damages, as allowed by law.

7. For attorneys' fees, costs and interest as provided by the Missouri Securities Act.

RR requested that the claims of Heath and the Schmidts be denied.

LMC requested that the claims of Heath and the Schmidts be denied.

Rosenbaum requested that the claims of Heath and the Schmidts be denied.

In their Amended Statement of Claim, Heath and the Schmidts requested that the panel award them compensation for the following:

1. Their losses of principal and income;
2. Commissions, mark ups, mark downs, and other fees paid to the Respondents;
3. Margin interest paid to the Respondents;
4. Attorneys' fees, costs and interest as allowed by Missouri law;
5. Compensation for the anguish, distress and worry caused them by the Respondents' mishandling of their accounts; and
6. For punitive damages, as allowed by Missouri law.

In their response to the Amendment, LMC requested that the Amendment be rejected by the panel.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Franklin Acquisition Co. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 8 of the Code and having answered the claim, appeared and testified at the hearing

is bound by the determination of the arbitration panel on all issues submitted.

Respondent Rodman & Renshaw, Inc. had filed a Motion to Sever the Claims in this case. After reviewing the Motion and responses, the Director of Arbitration preliminarily denied the Motion to Sever.

Respondents Richard Stern, Trustee for the Stern Bros. Liquidating Trust, Franklin Acquisition Co., and LM Consolidated Financial Corp. filed a Motion to Dismiss pursuant to the statute of limitations. After review of the Motion and responses, the Director ordered that the Motion go to the panel for decision.

Respondents, Rodman and Renshaw, Inc., LM Consolidated Financial Corp., Franklin Acquisition Co., and Richard Stern, Trustee for the Stern Bros. Liquidating Trust, filed Motions to Sever the claims. After review of the Motions and the responses, and deliberation, the panel denied the Motions to Sever.

Respondents LM Consolidated, Richard Stern, Trustee for the Stern Bros. Liquidating Trust, and Franklin Acquisition Co., brought their Motion to Dismiss before the panel. Respondent Rodman & Renshaw, Inc. joined in this Motion. After review of the Motion and responses, hearing arguments from the parties present at the hearing, and deliberation, the panel reserved its ruling on this Motion until after the close of the record.

Claimants, Ann Heath, and Gordon C. Schmidt and Peggy L. Schmidt, filed a Motion to Amend their Statement of Claim. After review of the Motion and responses, and deliberation, the panel ruled that the Amended Statement of Claim was properly before the panel, and the issues before the panel were limited to those raised in the Amended Statement of Claim.

The parties present at the hearing have agreed that the Award in this matter may be executed by 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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants', Gordon C. Schmidt, Peggy L. Schmidt, and

Anne Heath, claims are hereby denied and dismissed with prejudice. The panel has denied the asserted claims as untimely and has not reached the merits of the claims in its award.

2. Respondent, Rodman & Renshaw, Inc.'s Motion to Sever the Claimants' claims is hereby denied with prejudice.

3. Respondents, Rodman & Renshaw, Inc., Richard Stern, Trustee for the Stern Bros. Liquidating Trust, Franklin Acquisition Co., and LM Consolidated Financial Corp.'s Motions to Dismiss Claimants' claims on statute of limitations grounds are hereby granted.

- a. The panel ruled that Claimants' filed their claim with the NASD effective June 4, 1991. Thus, the U.S. Supreme Court decision in Lampf v. Gilbertson, ___ U.S. ___, 111 S.Ct. 2777 (1991) is inapplicable.
- b. Under Missouri and Federal Securities Acts, the applicable time limit in this case was two (2) years. However, this time limit tolls from the date of discovery.
- c. For both Claimants, the last non-exchange purchase of Ramtek stock or bonds occurred in June, 1988.
- d. The last significant information regarding the problems with Ramtek Corp. occurred in 1988.
- e. In argument, Claimants alleged generally that they did not "discover" the violations asserted in their claim until within the two (2) year period prior to June 4, 1991. However, neither Claimant ever provided a specific explanation in support of this allegation.
- f. The panel finds nothing in the record to support a tolling into the two (2) year period prior to June 4, 1991.
- g. The panel rejects the Claimants' other arguments opposing the Respondents' Motions to Dismiss.

OTHER COSTS

4. Each party shall bear their own costs of this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

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

1 pre-hearing conference session X \$300.00 = \$300.00

6 hearing sessions X \$750.00 = \$4,500.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall refund the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimants.

Forum fees in the amount of \$2,400.00 are assessed against Respondent Rodman & Renshaw, Inc.

Forum fees in the amount of \$2,400.00 are assessed against Respondent LM Consolidated Financial Corp.

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

CONCURRING ARBITRATORS

Dated:

July 30, 1992

/s/Michael William Gear
Michael William Gear
Presiding Chair
Public Arbitrator

July 29, 1992

/s/Robert G. Scott
Robert G. Scott
Public Arbitrator

July 29, 1992

/s/M. Douglas Mays
M. Douglas Mays
Industry Arbitrator

Date of Service by the NASD: _____