

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Donald and Rosemarie Hartman

91-02530

Name of Respondents

Anthony Ferruzzi
John T. Moran
Albert Ziade
Todd H. Nadell
Anthony Stoisch

REPRESENTATION

For Claimants: David G. Hirschberg, Esq. of Wexler & Burkhart, P.C.

For Respondent Todd H. Nadell ("Respondent Nadell"): James O. Druker, Esq. of Kase & Druker, Esqs.

For Respondent Albert Ziade ("Respondent Ziade"): Albert Ziade

For Respondent John T. Moran ("Respondent Moran"): John T. Moran

For Respondent Anthony Ferruzzi ("Respondent Ferruzzi"): Anthony Ferruzzi

For Respondent Anthony Stoisch ("Respondent Stoisch"): Anthony Stoisch

CASE INFORMATION

Statement of Claim filed: August 5, 1991

Claimant Donald Hartmann's Submission Agreement signed on: August 9, 1991.

Claimant Rosemarie Hartmann's Submission Agreement signed on: August 8, 1991.

Claimant Richard Hartmann's Submission Agreement signed on: August 6, 1991.

Statement of Answer filed by Respondent Todd H. Nadell on: October 3, 1991.

Respondent Todd H. Nadell's Submission Agreement signed on: October 7, 1991.

Statement of Answer filed by Respondent Albert Ziade on: October 9, 1991.
Respondent Albert Ziade's Submission Agreement signed on January 13, 1992.
Statement of Answer filed by Respondent John T. Moran on: December 24, 1991.
Respondent John T. Moran's Submission Agreement signed on December 24, 1991.
Statement of Answer filed by Respondent Anthony Ferruzzi on October 28, 1991.
Respondent Anthony Ferruzzi's Submission Agreement signed on: April 21, 1992.
Statement of Answer filed by Respondent Anthony Stoisch on: October 17, 1991.
Respondent Anthony Stoisch's Submission Agreement signed on April 21, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: April 21, 1992 - Two Sessions.
April 22, 1992 - Two Sessions.

Hearing Location: NASD Office, New York, New York

CASE SUMMARY

Claimants Donald and Rosemarie Hartmann ("Claimants") alleged that they maintained accounts with J.T. Moran & Co., Inc. ("JTM") and with Investors Center, Inc. ("ICI"). Respondent Nadell was Claimants' account executive at both these brokerage firms. Claimants alleged that they were approached by Respondent Nadell who advised them to invest in low priced securities which were guaranteed to provide a 50% return on investment in six months.

Claimants alleged that they told Respondent Nadell their investment objective was safety of principal and they further explained that a portion of the funds were needed to finish paying for their son's college education. Claimants alleged they were assured by Respondent Nadell that the investments he was recommending to Claimants were suitable for their objectives. Claimants alleged that a substantial portion of the funds were maintained in Claimant's IRA accounts and were thus subject to the "prudent man rule" since this was a fiduciary account.

Claimants alleged that notwithstanding their discussions with Respondent Nadell, he invested substantially all of Claimants' funds in low priced, speculative securities. Claimants alleged that all purchases and sales were

done at the recommendation of Respondent Nadell and in this respect it can be said that Respondent Nadell controlled the accounts. Claimants alleged that during 1 1/2 years, Respondent Nadell solicited the purchase of 27 securities, all of which resulted in losses. Claimants alleged that Respondent Nadell did not provide prospecti, annual reports or other research on any of the securities to Claimants, and by this willful failure to disclose, he misrepresented these securities to Claimants. Claimants alleged that Respondent Nadell had a further fiduciary relationship with Claimants and was obligated to recommend suitable investments for Claimants' stated objectives.

Claimants alleged that Claimant Donald Hartmann instructed Respondent Nadell to begin liquidating the portfolios and that Respondent Nadell failed to comply with these instructions. Claimants alleged that by failing to act on their instructions, Respondent Nadell further jeopardized any remaining equity Claimants had in the securities.

Claimants alleged that during the time the accounts were maintained at JMC, Respondent Ziade was the Branch Office Manager of the branch where Respondent Nadell worked. Claimants alleged that Respondent Ziade failed to detect and curtail Respondent Nadell's practices with regard to Claimants' accounts.

Claimants alleged that as principals of their respective brokerage houses, Respondents Moran and Stoisch were directly responsible for the overall practice of supervision practiced within their firms. Claimants alleged that Respondents Moran and Stoisch were or should have been aware of the lack of adequate supervision within their firms and they failed to take the necessary action to curtail Respondent Nadell's activities in Claimants' accounts.

Respondent Nadell maintained that he did not approach Claimants with any guarantees as to return on their investment, rather, Claimant Rosemarie Hartmann approached him at his offices at ICI and wanted to open an account and purchase shares of Jamaica Water Power. Respondent Nadell maintained that shortly afterwards, ICI was coming out with a new issue and he sent a prospectus to Claimants who purchased the security. Respondent Nadell maintained that Claimants made money on this offering and continued to invest in new public offerings. Respondent Nadell maintained that he asked Claimants about their investment strategy and was told by Claimant Donald Hartmann that they wanted "big hits". Respondent maintained that the speculative strategy he followed was dictated by the Claimants. Respondent Nadell denied that he controlled the accounts and failed to provide prospecti and other research. Respondent Nadell denied that Claimants instructed him to liquidate the securities in their account.

Respondent Ziade maintained that he was manager of the Carle Place Branch of JMC where Respondent Nadell worked. Respondent Ziade maintained that he never received a complaint from the Claimants and did not, with reasonable supervision of Respondent Nadell, discover facts which would indicate any wrongdoing with respect to Nadell's handling of Claimants' accounts. Respondent Ziade maintained that Claimants did not advise him of the failure

of Respondent Nadell to comply with Claimants' specific instruction to liquidate the securities in their accounts.

In response to Claimants' allegation that he failed to supervise Respondent Nadell, Respondent Moran maintained that he did employ Nadell and had no direct responsibility of "supervision" over him. Respondent Moran maintained that Respondent Nadell was an employee of JMC and that Moran was a stockholder of JMC's parent corporation, a director of both corporations, and for certain periods of time, the CEO of JMC. Respondent Moran maintained that he properly discharged his supervisory duties by establishing a compliance department. Respondent Moran maintained that he was never advised of any compliance problems with regard to Respondent Nadell and knew of no facts regarding Respondent Nadell's specific duties.

Respondent Ferruzzi maintained that as a principal of ICI, he had no knowledge of any trades made on behalf of the Claimants - such trades being made before he joined the firm.

Respondent Stoisch maintained that during the time he was a principal at ICI he did not authorize any of the acts to which Claimants refer and has no knowledge of them.

RELIEF REQUESTED

Claimants requested an award of \$156,758.93 plus reasonable attorneys fees and punitive damages.

Respondent Nadell requested that Claimants claim be dismissed in its entirety based, among other things, on the expiration of the statute of limitations.

Respondent Ziade requested that the claim be dismissed against him.

Respondent Moran requested that the claim be dismissed as against him and for reasonable costs including attorney's fees.

Respondent Ferruzzi requested that he be stricken from the action.

Respondent Stoisch requested that the action be dismissed against him.

OTHER ISSUES CONSIDERED & DECIDED

Claimants have withdrawn their claim against Respondents Thomas P. Flanagan, Ronald Rosato and Carl Lombardi. In addition, Claimant Richard Hartmann has withdrawn his claims against all Respondents and is no longer a Claimant in this action.

During the course of the arbitration proceeding, the Arbitration Panel

denied Respondent, Todd E. Nadell's Motion to Dismiss the claim as being outside the statute of limitations.

During the course of the arbitration proceeding, the Arbitration Panel had determined that they had full jurisdiction over this matter and overruled Respondent Ziade's Objection to Jurisdiction and denied Respondent Ziade's Motion to Dismiss the Action against him.

During the course of the proceeding, the Arbitration Panel decided to overrule Respondent Anthony Ferruzzi's Motion to Dismiss the action against him.

During the course of the proceeding, the Arbitration Panel had decided that they had full jurisdiction over Respondent Anthony Stoisch and denied Respondent Stoisch's Motion to Dismiss the Action against him.

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(s) remains on file with the NASD.

AWARD

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

1. That Respondent Nadell is liable to the Claimants and shall pay to the Claimants the sum of **TEN THOUSAND FOUR HUNDRED FIFTY EIGHT AND 11/100 DOLLARS (\$10,458.11)**.
2. That Respondents Nadell and Ziade are jointly and severally liable to the Claimants and shall pay to the Claimants the sum of **NINE THOUSAND FOUR HUNDRED TWELVE AND 90/100 DOLLARS (\$9,412.90)**.
3. The Arbitrators concluded that the purchases solicited for the Claimants IRA accounts at issue were unsuitable.
4. That all claims against Respondents Ferruzzi, Stoisch and Moran are denied.
5. Claimants' claim for punitive damages is denied in its entirety.
6. That each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

That Forum Fees shall be split equally between Respondents Nadell and Ziade. That there was four hearing sessions conducted in this matter at a cost of \$750 per session; therefore, Nadell shall pay forum fees in the amount of \$1500 and Ziade shall pay forum fees in the amount of \$1500.

Forum Fees shall be paid to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name

Industry Arbitrator

C. Anthony Bafi
C. Anthony Bafi

Executed on:

~~Date of Decision~~

May 8, 1992

Date of Decision:

May 18, 1992

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

That Forum Fees shall be split equally between Respondents Nadell and Ziade. That there was four hearing sessions conducted in this matter at a cost of \$750 per session; therefore, Nadell shall pay forum fees in the amount of \$1500 and Ziade shall pay forum fees in the amount of \$1500.

Forum Fees shall be paid to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name



David E. Robbins, Esq.

Public Chairperson

Executed on:

~~DATE OF DECISION~~

5/5/92

Date of Decision: May 12, 1992

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

That Forum Fees shall be split equally between Respondents Nadell and Ziade. That there was four hearing sessions conducted in this matter at a cost of \$750 per session; therefore, Nadell shall pay forum fees in the amount of \$1500 and Ziade shall pay forum fees in the amount of \$1500.

Forum Fees shall be paid to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature

Name

Charles C. Marotta

Charles C. Marotta

Public Arbitrator

Date of Decision May 18, 1992