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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Dana Loewenthal

Case No. 91-02580

Name of Respondent(s)

Global Capital Securities, Inc.
Frank Laudadio
Sheldon Lieberbaum

REPRESENTATION

For Claimant, Dana Loewenthal ("Loewenthal"): Russell L. Forkey, Esq.

For Respondents, Global Capital Securities, Inc. ("Global"): Michael H. Pincus of Vantage Securities, Inc.; Frank Laudadio ("Laudadio"): Ronald Shindler, Esq. of Fowler White; and, for Sheldon Lieberbaum ("Lieberbaum"): R. David Prescott, Esq., of Rutledge, Ecenia, Underwood & Purnell.

CASE INFORMATION

Statement of Claim filed: August 20, 1991. Claimant's Submission Agreement signed: August 15, 1991.

Respondents' Statements of Answer filed: by Global on September 11, 1991; by Laudadio on November 1, 1991; and, by Lieberbaum on September 25, 1991. Respondents' Submission Agreements signed: by Laudadio on September 6, 1991, and by Lieberbaum on October 25, 1991. Respondent, Global, did not sign a Submission Agreement as required by Sections 12 and 25 of the Code (see "Other Issues").

HEARING INFORMATION

The hearing dates originally scheduled for May 14 and 15, 1992 were postponed by the Panel at the request of Respondent, Lieberbaum. On November 5, 1992, in Fort Lauderdale, Florida, a hearing lasting one session was conducted. Subsequently, the Panel granted Respondent Lieberbaum's motion to reopen the hearing and an additional hearing lasting one session was held in Miami, Florida on May 22, 1993.

CASE SUMMARY

Claimant alleged that Respondents, through Laudadio, made misrepresentations of and omitted to state material facts; failed to follow instructions regarding the purchase and sale of units in Caribbean Select; made unauthorized trades in her account; established an account jointly for Claimant and Mitchell Management which was unauthorized; and, that Respondents' actions constituted fraud, negligence, breach of fiduciary duties, breach of contract, negligent supervision by Global, and violation of Section 517.301, Florida Statutes.

Respondents denied all allegations of wrongdoing. Respondent, Laudadio, reached a settlement with Claimant in May 1992, and therefore, was removed as a party to this matter.

Respondent, Global, alleged that it ceased doing business as of January 31, 1991, would not be represented at the hearing and has no funds. Global did not appear at the hearing to defend in this matter.

Respondent, Lieberbaum, alleged that Claimant placed a market order to sell her units against his advice and that any losses were due solely to her own decisions in the market. Lieberbaum did not appear at the hearing to defend in this matter.

RELIEF REQUESTED

Claimant, in its moving papers, requested damages in the amount of \$20,390.14, interest, costs and punitive damages.

Respondents requested dismissal.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent, Global, failed to sign a Submission Agreement as required by Sections 12 and 25 of the Code. Pursuant to these Sections, this Panel has jurisdiction of the Claims involving Global.
2. Respondent, Global, did not attend the hearings in this matter. Global had previously advised the NASD that it would not be attending due to a lack of funds. Respondent Lieberbaum did not attend the hearing on November 5, 1992. On the morning of the November 5 hearing, Jay Israel, Esq. telephoned to say that Lieberbaum was not going to appear. When Mr. Israel was telephoned during the hearing on the record, the telephone was answered "Lew Lieberbaum," which appeared to be the business where both Lieberbaum and his former attorney Mark I. Lew, Esq. are employed. Mr. Israel asked Mr. Brian Clendenin to join the telephone call. Mr. Clendenin identified himself as the Director of Compliance for the firm, stated that neither he nor Mr. Israel represented Lieberbaum, and that he did not know if Lieberbaum had counsel or if Mr. Lew was still his attorney. The Panel advised that the hearing would proceed. Mr. Clendenin telephoned during the Claimant's testimony and the Panel permitted the call on the record. Mr. Clendenin stated that Lieberbaum was on his way to work in Garden City, New York and wished to appear by telephone with his doctor to give testimony. The Panel advised Mr. Clendenin that if Lieberbaum called prior to the conclusion of the hearing, that the Panel would listen to what he had to say. Lieberbaum did not telephone prior to the conclusion of the hearing.

3. Pursuant to Section 29 of the Code, this Panel proceeded with the November 5 hearing, in the absence of both Global and Lieberbaum, as if each had appeared and defended in this matter.

4. After the November 5 hearing and prior to entry of a Final Award, Respondent Lieberbaum moved for reopening of the hearing for the purpose of presenting Lieberbaum's testimony to the Panel. Claimant opposed this motion, but the Panel granted the request and a second hearing was held on May 22, 1993. Again Global elected not to attend this second hearing session, and so informed the NASD.

5. Pursuant to Section 29 of the Code, this Panel proceeded with the May 22 hearing and enters this Award, in the absence of Global, as if it had appeared and defended in this matter.

6. Respondent Laudadio previously settled this matter with Claimant and was removed as a party. Therefore, no claims pertaining to Mr. Laudadio were considered or decided by the Panel.

7. The Claimant and Respondent Lieberbaum 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 Claimant and Respondent Lieberbaum 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, Lieberbaum and Global, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$28,000.00, plus interest at the legal rate of 12% per annum (from November 24, 1989 on lost profit calculation and from January 11, 1990 on damage calculation to May 22, 1993) in the amount of \$11,536.08 for a total due to the Claimant of \$39,536.08.

2. Respondents, Lieberbaum and Global, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$10,000.00 for punitive damages. This award of punitive damages is based upon a finding of gross negligence in the handling of Claimant's funds and instructions in this matter. This Panel bases its authority to award punitive damages on Title 9 U.S.C. Section 1 et. seq. and the applicable provisions of the Code of Arbitration Procedure and the case law construing those statutes.

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, the Panel has assessed forum fees in the amount of \$800.00 (two session x \$400.00).
2. The NASD shall retain the \$400.00 previously deposited by Claimant in partial satisfaction thereof.
3. Respondents, Global and Lieberbaum, are hereby assessed \$800.00, jointly and severally, \$400.00 of which shall be paid directly to the Claimant to reimburse her for the deposit previously made, and \$400.00 of which shall be paid to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

151
Craig Edward Stein, Esq.

Public

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Richard D. Toplin

Industry

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Judy Avey

Public

Date of Decision: 7/15/97