

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

John F. & Shirley K. Herlihy  
Theodore Bitter

91-03247

consolidated w/91-03257

Name of Respondents

Martin Frankel  
LaSalle Street Securities, Inc.

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REPRESENTATION

For Claimants: Jeffrey Creamer, Esq. of Shumaker, Loop & Kendrick.

Respondent Martin Frankel did not attend the hearing.

Respondent LaSalle Street Securities, Inc. has entered into a settlement agreement with the Claimants prior to the commencement of the first hearing session.

CASE INFORMATION

Statement of Claim of John & Shirley Herlihy ("Claimants") filed on: October 16, 1991.

Claimants' John & Shirley Herlihy's Submission Agreements signed on: September 26, 1991.

Statement of Claim of Theodore Bitter filed on: October 16, 1991.

Claimant Theodore Bitter's Submission Agreement signed on: September 31, 1991.

Statement of Answer filed by Respondent LaSalle Securities, Inc. to Claimants John & Shirley Herlihy's Statement of Claim on: November 21, 1991.

Statement of Answer filed by Respondent LaSalle Securities, Inc. to Claimant Theodore Bitter's Statement of Claim on: November 22, 1991.

Respondent Martin Frankel did not execute a Submission Agreement nor submit an answer, however, pursuant to Section 12 of the NASD Code of Arbitration Procedure the arbitrators exercised their jurisdiction over him.

HEARING INFORMATION

Hearing Dates/Sessions: June 16, 1992, 2 sessions  
June 17, 1992, 2 sessions

Hearing Location: NASD offices located in Cleveland, Ohio.

CASE SUMMARY

Claimants alleged that they invested their retirement savings with Respondent LaSalle Street Securities, Inc. ("LaSalle Securities") through its Toledo branch office managed by Respondent Martin Frankel ("Frankel") and invested their savings into the "Frankel Fund." Claimants further alleged the Frankel Fund had collapsed and they subsequently learned Respondent Frankel's representations that the Fund showed growth and would experience further growth were false, and that Respondent Frankel engaged in fraudulent conduct, outright conversion of Claimants' monies, breach of fiduciary duty, negligence and negligent misrepresentation. Claimants further alleged that Respondent LaSalle Securities had little or no reliable means in place to supervise its registered representatives and aggressively sought to cover up Respondent Frankel's numerous violations of state and federal securities laws.

Respondent LaSalle Securities maintained that Claimants suffered no loss while their accounts were at Respondent LaSalle Securities and it was not until Claimants transferred their funds to First Trust Corp. and then to Mesirow & Co., Inc. then to PDS Securities International that their money was lost. Respondent LaSalle Securities further maintained it did properly supervise Respondent Frankel when he was in its employ and Respondent LaSalle Securities at all times acted in good faith, maintained and enforced its Rules of Supervisory Procedure.

RELIEF REQUESTED

Claimant John Harlihy requested compensatory damages in the amount of \$294,542 plus punitive damages in the amount of \$500,000 and pursuant to RICO damages in the sum of \$883,626 as well as attorneys' fees.

Claimant Theodore Bitter requested compensatory damages in the amount of \$63,952 plus punitive damages in the amount of \$175,000 and pursuant to RICO damages in the sum of \$191,856 as well as attorneys' fees.

Respondent LaSalle Securities requested that all claims against them be dismissed and all costs and attorneys' fees be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The arbitration panel made the following rulings with regard to the Respondent:

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In accordance with Section 1 of the Code of Arbitration Procedure, the panel ruled that it had jurisdiction over Respondent Frankel;

In accordance with section 25 of the Code of Arbitration Procedure, Respondent Frankel was served with the Statement of Claim and given the opportunity to respond which he failed to do;

In accordance with section 21 and Section 26 of the Code of Arbitration Procedure, Respondent Frankel was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing;

In accordance with Section 29 of the Code of Arbitration Procedure, the panel ruled that the Respondent Frankel had adequate notice of this hearing and determined to proceed with the Respondent Frankel as a party in his absence.

**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 Frankel be and hereby is liable and shall pay to Claimant Herlihy the sum of \$172,000 in compensatory damages and the sum of \$450,000 in punitive damages pursuant to case law submitted by Claimants.
2. That Respondent Frankel be and hereby is liable and shall pay to Claimant Bitter the sum of \$41,632 in compensatory damages and the sum of \$135,000 in punitive damages pursuant to case law submitted by Claimants.
3. That Respondent Frankel be and hereby is liable and shall pay to Claimant Herlihy \$128,000 to represent attorneys fees and to Claimant Bitter \$48,600 to represent attorneys fees pursuant to case law submitted by Claimants.
4. That all RICO claims be and hereby are denied.
5. That preceding the hearing the panel was informed Claimants and Respondent LaSalle Securities had entered into a settlement agreement.

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FORUM FEES

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

4 sessions x \$1000 = \$4000 less \$1750 hearing session deposit =  
\$2250 net due.

Respondent Frankel be and hereby is liable and shall pay to the NASD the sum of \$2250 to represent forum fees. The Respondent Frankel be and hereby shall pay to Claimant Herlihy \$1,250 to reimburse for his fees paid and to Claimant Bitter \$950 to reimburse him for his fees paid.

The NASD shall retain the \$1750 hearing session deposit previously deposited by Claimants.

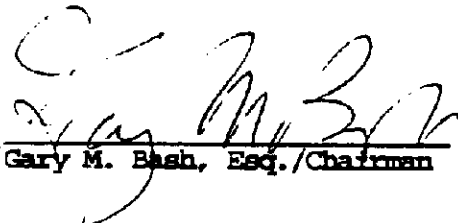
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Concurring Arbitrator's Signature:

Name

Public/Industry

  
\_\_\_\_\_  
Gary M. Bash, Esq./Chairman

\_\_\_\_\_  
Public Arbitrator

Date of Decision: August 11, 1992.

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Award #'s 91-03247 & 91-03257

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The NASD shall retain the \$750 hearing session deposit previously deposited by Claimants.

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

ARBITRATION PANEL

Concurring Arbitrator's Signature:

Name

Public/Industry

  
\_\_\_\_\_  
Joseph W. Grossner

\_\_\_\_\_  
Public Arbitrator

Date of Decision: August 11, 1992

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ARBITRATION PANEL

Concurring Arbitrator's Signature:

Name

Public/Industry

  
Leslie J. Wilson

Industry Arbitrator

Date of Decision: August 11, 1992