

N.A.S.D. AWARD

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
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(305) 522-7391

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))Mark & Barbara Okun)
and Edith Braunstein)

Case No. 91-03264

Name of Respondent(s))Datek Securities Corp.)
Litwin Securities Inc.)
Felix Smolensky)REPRESENTATION

For Claimants, Mark and Barbara Okun ("Okun") and Edith Braunstein ("Braunstein"): Curtis Carlson, Esq. of Carlson Bales & Schwed.

Respondent, Datek Securities Corp. ("Datek"): pro se.

For Respondents, Litwin Securities Inc. ("Litwin") and Felix Smolensky ("Smolensky"): A. Litwin, Esq.

CASE INFORMATION

Statement of Claim filed: October 17, 1991. Claimants' Submission Agreement signed: October 17, 1991.

Respondent, Litwin's, Statement of Answer filed: August 21, 1992.

Respondent, Litwin's, Submission Agreement signed: September 16, 1992 by Harold Litwin on behalf of the firm.

Respondent, Smolensky's Submission Agreement signed: January 6, 1992.

Respondent, Smolensky's, Statement of Answer filed: January 8, 1991.

Respondent, Datek's, Statement of Answer filed: September 16, 1992.

Respondents, Datek and Litwin, did not file executed Submission Agreements as required by Sections 8, 12 and 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

On September 16 and 17, 1992, in Fort Lauderdale, Florida, a hearing lasting four (4) sessions was conducted.

WARD-#91-03264

CASE SUMMARY

Claimant, Mark Okun, alleged that he opened three accounts with Respondents, two of which were joint accounts with Barbara Okun and one of which was a joint account with Edith Braunstein, that he is an emigre from Russia with little formal education and limited assets and that notwithstanding his stated investment objectives of safety and low risk, Respondent, Smolensky took implied and, at times, actual discretionary control over Claimants' accounts and purchased high risk stocks and options on margin and in amounts that were totally unsuitable and inappropriate for Claimants. Claimant further alleged that Respondents, Datek and Litwin are responsible for the actions of Respondent, Smolensky inasmuch as he was their employee and under their supervision and control.

Respondent, Datek, denied all allegations of wrongdoing contained in the Statement of Claim and maintained that it had no involvement what-so-ever in any of the transactions which are the subject matter of the Claim. Datek stated that no communications took place between Claimants and Datek only with Litwin and its personnel. Datek further stated that Litwin has a written indemnity agreement with Datek and that Litwin is responsible for payment of every award a Claimant may have in arbitration.

Respondents, Litwin and Smolensky, denied all allegations of wrongdoing and maintained that, contrary to Claimants' allegations that they wanted only safe and secure investments, that Mark Okun had a penchant for highly speculative investments and that in fact Mark Okun signed a statement on 5/26/87 that speculative trading is appropriate for his financial situation and objectives.

RELIEF REQUESTED

Claimants requested an award of damages in the amount of \$118,694.00 plus interest as well as punitive damages, attorneys' fees and costs.

Respondents requested dismissal of the Claim.

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 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:

AWARD-#91-03264

1. Respondents, Datek Securities Corp., Litwin Securities, Inc. and Felix Smolensky, are found liable, jointly and severally, and shall pay to the Claimants the amount of Eighty Nine Thousand Dollars and No Cents (\$89,000.00);
2. Claimants' requests for punitive damages, attorneys' fees and costs are hereby denied.

OTHER COSTS

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (four sessions x \$750.00 per session).

1. Respondents, Datek, Litwin and Smolensky, are hereby assessed forum fees of \$3,000.00, jointly and severally, \$750.00 of which shall be paid directly to the Claimants, and \$2,250.00 of which shall be paid to the National Association of Securities Dealers, Inc.
2. The NASD, shall retain the \$200.00 non-refundable deposit paid by Claimants.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

Ronald Thomas Spann, Esq.
(Public/Chairman)

/s/

Oscar Bobis
(Public/Panelist)

/s/

Penny N. Miller
(Industry/Panelist)

Date of Award: October 19, 1992