

N.A.S.D. AWARD

Arbitration

[®]
NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Eugene & Marie Patipa)

Name of Respondent(s))

Jesup, Josephthal Securities Co., Inc.)

Jonathan Brody)

Shelley Berman)

Case No. 91-03333

REPRESENTATION

Claimants, Eugene and Marie Patipa ("the Patipas") were pro se.

For Respondent, Jesup, Josephthal Securities Co., Inc. ("JJC"): Joseph Schmidt of JJC.

For Respondents, Jonathan Brody ("Brody") and Shelley Berman ("Berman"):
Alan Grunspan, Esq. of Kaufman, Miller, Dickstein et.al.

CASE INFORMATION

Statement of Claim filed: October 23, 1991. Claimants' Submission Agreement signed: October 9, 1991.

Respondents Brody and Berman's, Statement of Answer filed: March 2, 1992.
Respondents, Brody and Berman's Submission Agreements signed: March 13, 1992.
Respondent, JJC's, Statement of Answer filed: December 11, 1991. Respondent, JJC's Submission Agreement signed: December 10, 1991 by Daniel Cunningham on behalf of JJC.

HEARING INFORMATION

On September 3, 1992, in Fort Lauderdale, Florida, a hearing lasting one (1) session was conducted.

CASE SUMMARY

Claimants alleged that Respondents were liable for: open account; account stated; and breach of written agreement. Claimants alleged that Respondent failed to properly execute an order pursuant to Claimants' instructions; that Claimants and Respondents entered into a written agreement by which Respondents agreed to hold, as security for payment, only those securities limited to, and not to exceed, the alleged obligation and Respondents failed to deliver to Claimants those securities with value in excess of the alleged obligation.

Respondents denied all allegations of wrongdoing and alleged that the securities were held against a debit balance in Claimants' account.

Respondents alleged the affirmative defenses including that: Claimants do not disclaim the debit balance; all actions were in accord with the customer agreement; Claimants have not established any basis for the damages claimed and the Statement of Claim fails to state any basis for liability against Brody and Berman.

RELIEF REQUESTED

Claimants requested damages in the amount of \$11,024.74 plus costs and fees.

Respondent, JJC, requested dismissal of the claim plus costs.

Respondents, Brody and Berman, requested dismissal of the claim plus costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. This Panel finds that jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure ("Code"), Respondent, JJC, being an NASD member firm at the time this controversy arose.

2. For the reasons set forth in the record of proceedings and contained in Arbitrators Exhibit #2 this Panel finds due notice to Respondent, JJC, and therefore, pursuant to Section 29 of the Code, proceeded with this arbitration and renders this Award as if each party had entered an appearance in the matter submitted.

3. After careful consideration this Panel has determined that Respondent, Berman's, Motion to Dismiss is hereby granted.

4. The parties that appeared 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, and Respondent, JJC, neither appearing at the hearing nor requesting an adjournment thereof, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Brody and JJC, are found not liable and, therefore, all claims against them are hereby dismissed.

2. Claimants' request for fees and costs is denied.

3. Respondents' requests for attorney's fees and costs are denied.

OTHER COSTS

1. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$400.00 (one session x \$400.00 per session).
2. Respondent, JJC, is hereby assessed \$400.00 payable directly to the Claimants.
3. The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimants.
4. Respondent, JJC, shall reimburse the Claimants \$100.00 for the non-refundable filing fee.
5. The NASD shall retain the session deposit of \$400.00 paid by Claimants in full satisfaction of such forum fees.

Concurring Arbitrators' Signatures

/s/
Harry Polansky

Public

/s/
Ralph M. Byer

Industry

/s/
Michael Lau

Public

Date of Decision: September 29, 1992