

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Anthony Galizia

Case #

vs.

91-03460

Name of Respondents

Mike Pitsokos
Lew Lieberbaum & Co.

REPRESENTATION

For Claimant: Andrew Hoffman, Esq. for the law firm of Wiseman, Hoffman & Walzer, Brooklyn, New York

For Respondent: Lew Lieberbaum & Co., Inc. ("Lew Lieberbaum") represented by Jay Israel, Esq., Associate Director of Compliance

For Respondent: Mike J. Pitsokos ("Pitsokos"), Represented himself

CASE INFORMATION

Statement of Claim filed on: October 31, 1991.

Amended Statements of Claim dated: October 28, 1991 and July 27, 1992.

Claimant's Submission Agreement signed on: October 28, 1991.

Statement of Answer filed by Respondent, Pitsokos on: November 20, 1991.
Pitsokos did not sign a Submission Agreement.

Lew Lieberbaum did not file an Answer.

Lew Lieberbaum's Submission Agreement signed on: January 6, 1993.

HEARING INFORMATION

Hearing Date/Sessions: January 6, 1993/Two Sessions

Hearing Location: National Association of Securities Dealers, Inc., 33 Whitehall Street, 8th Floor, New York City, New York 10004

CASE SUMMARY

Claimant alleged that Respondent Lew Lieberbaum, through its registered representative Respondent Pitsokos, misrepresented that an investment in the units of Kitchen Bazaar would be short term and would yield a rate of return of approximately 60-70%. Claimant alleged that these units consisted of 100 shares of preferred stock and 4,000 warrants and that Pitsokos stated that the investment had a risk level associated with it of minimal to none at all.

Claimant further alleged that Respondent misrepresented that the securities were approved by the United States Securities and Exchange Commission. Claimant alleged that Pitsokos subsequently told him that the units were already sold to other investors but that warrants continued to be available for sale and that these warrants alone would yield the same 60-70% return as the units. Claimant alleged that he was unfamiliar with warrants but, nevertheless, made the purchase at the urging of the Respondent. Specifically, Claimant alleged that the investment in the warrants were made based on Respondents' false reassurances and misrepresentations that the investment would be returned with interest in 30-45 days. Claimant alleged that he learned, upon viewing his statement, that the investment price had fallen since the time that the investment was made. Claimant alleged that he requested Respondent to forward a prospectus to him. Upon receipt of the prospectus, Claimant alleged that he became aware that the Kitchen Bazaar investment involved a high degree of economic risk and substantial dilution. Claimant alleged that when he questioned Respondent on why no prospectus was sent, that Respondent told him that the prospectus probably had gotten lost.

Claimant further alleged that Respondent failed to inform him of other risk factors associated with Kitchen Bazaar, such as, the company's poor financial condition, and that Kitchen Bazaar required other financing in addition to the offering of the stock and warrant units to maintain operations.

Respondent Pitsokos maintained that Claimant contacted him and inquired about participating in Lew Lieberbaum's secondary issuance of Kitchen Bazaar. Pitsokos maintained that he explained Kitchen Bazaar's operation and financial history in detail to Claimant and that the investment was associated with a high risk level and included the possibility of losing the entire investment. Pitsokos maintained that he explained to Claimant that all of the allocations of the secondary issuance of Kitchen Bazaar were complete, however, Kitchen Bazaar warrants could be purchased in the aftermarket. Pitsokos maintained that he explained to Claimant what warrants were, their expiration dates and exercise prices.

Pitsokos maintained that Claimant expressed investment goals of growth and speculation and that Claimant was a suitable investor for Kitchen Bazaar. Particularly, Pitsokos maintained that Claimant represented that as a result of ten years of experience in the financial markets, that Claimant was familiar with all types of financial vehicles, including warrants.

Pitsokos maintained that Claimant became upset with the fallen market value of Kitchen Bazaar and demanded a full refund. Pitsokos maintained that he recommended that Claimant cost average down by purchasing more warrants and that Claimant refused the offer.

Respondent Lew Lieberbaum did not submit a Statement of Answer.

RELIEF REQUESTED

1. Claimant requested FIVE THOUSAND TWO HUNDRED & FIFTY DOLLARS AND NO CENTS (\$5,250.00), representing the full investment.
2. Claimant requested interest from the trade date to the date all funds requested are refunded.
1. Respondent requested that the Claimant's claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

1. 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.
2. Respondent Pitsokos requested that he participate in the hearing via telephone. Claimant objected to this request. Respondent Lew Lieberbaum also objected to the request. The arbitrator denied Pitsokos' request to testify via conference call.
3. Respondent Pitsokos did not appear at the hearing. Based upon the information provided to the arbitrator regarding notice to Pitsokos, the arbitrator decided that Respondent Pitsokos was properly served and proceeded with the hearing pursuant to Section 29 of the Code of Arbitration Procedure.
4. Lew Lieberbaum was not originally named as a Respondent. Lew Lieberbaum maintained that the Amended Statement of Claim was not received by the firm. By letter dated December 22, 1992, Lew Lieberbaum requested the arbitration hearing be postponed, and in the alternative, an extension to answer be granted.

The Claimant objected to the postponement and the extension, asserting that Lew Lieberbaum was properly served.

The arbitrator ruled that Lew Lieberbaum was properly served by Claimant and denied Respondent Lew Lieberbaum's requests for an adjournment and an extension to answer.

AWARD

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

Claimant's claim is denied in its entirety.

FORUM FEES

\$200 X 2 sessions = \$400.00

The Respondents and the Claimant are ordered to equally bear the cost of the arbitration, each bearing (1/3) one third of the cost.

Claimant Anthony Galizia is to pay the NASD in the amount of \$133.33 (ONE HUNDRED & THIRTY-THREE DOLLARS AND THIRTY-THREE CENTS)
(To be offset by the \$200.00 already paid to the NASD)

Respondent Lew Lieberbaum is to pay Anthony Galizia \$66.67 (SIXTY-SIX DOLLARS AND SIXTY-SEVEN CENTS) and pay the NASD in the amount of \$66.99 (SIXTY-SIX DOLLARS AND NINETY-NINE CENTS)

Respondent Mike Pitsokos is to pay the NASD in the amount of \$133.33 (ONE HUNDRED & THIRTY-THREE DOLLARS AND THIRTY-THREE CENTS)

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


Robert Pincus, Esq.
Sole Public Arbitrator

Executed on: March 28, 1993
~~Date of Decision:~~

Date of Decision: May 18, 1993