

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Garland C. Friedrich and Virginia H. Friedrich

91-04022

Name of Respondents

Rodman and Renshaw, Inc.; and
Lester Jay Rodgers

REPRESENTATION

For Claimants: Garland C. Friedrich and Virginia H. Friedrich ("Friedrich") were represented by Marvin Klamen, Esq. of St. Louis, Missouri.

For Respondents: Rodman & Renshaw, Inc. was represented by Thomas P. Fitzgerald, Esq. of Altheimer & Gray, located in Chicago, Illinois.

Lester Jay Rodgers did not appear.

CASE INFORMATION

Statement of Claim filed: December 18, 1991.

Claimants' Submission Agreement signed on: January 13, 1992.

Amended Statement of Claim filed: July 29, 1992.

Second Amended Statement of Claim filed: January 29, 1993.

Statement of Answer filed by Respondent Rodman & Renshaw on: May 19, 1992.

Respondent Rodman & Renshaw's Submission Agreement signed on: March 3, 1992 by Guy D'Egidio, Vice President, Rodman & Renshaw, Inc.

Respondent Rodman & Renshaw's Answer to Amended Statement of Claim and Request for Dismissal filed: September 29, 1992.

Claimant's Response to Request for Dismissal filed: October 12, 1992.

Respondent Rodman & Renshaw's Answer and Request for Dismissal of Second Amended Statement of Claim filed: March 17, 1993.

Respondent Lester Jay Rodgers did not file an executed submission agreement or a Statement of Answer.

HEARING INFORMATION

Pre-Hearing Conference: July 21, 1993 for One (1) session before One (1) arbitrator;
February 28, 1994 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: November 9, 1994 for Two (2) sessions;
November 10, 1994 for Two (2) sessions;
January 17, 1995 for Two (2) sessions;
January 18, 1995 for Two (2) sessions.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimants alleged that Respondent Rodgers and Respondent Rodman & Renshaw violated the high standards of conduct imposed by the self regulatory organizations, and violated the fiduciary obligations imposed on them with regard to the Friedrichs' account. The claim asserted the following allegations:

1. Respondents falsely recorded or failed to record Claimants' and other customers' transactions, increasing Rodgers' opportunity to defraud Claimants and avoid SRO detection;
2. Respondents charged prices for securities in excess of the daily market range for securities;
3. Respondents would falsely assure Claimants that securities directed by Claimants to be sold, had been sold and that confirmations confirming the sale were delayed through error;
4. Respondent Rodgers would misrepresent the status of the account and the account documents to Claimants, and issue correction confirmations and inaccurate monthly statements;
5. Respondents treated the Friedrich account as their de facto discretionary account, engaging in unauthorized purchases and sales of securities;
6. As a result of Respondents' promises of profit and deception, Claimants were

led into unacceptable and unsuitable transactions, and concealed such transactions from the SROs by falsifying the identity and nature of the transactions;

7. Respondents misrepresented the nature and the identity of investments being made by Claimants;

8. Respondents "churned" the account through excessive trading, excessive commissions and account interest; and

9. Respondent Rodman & Renshaw filed a false Form U-5 upon Rodgers' termination in order to conceal the nature of his activities.

Respondent Rodman & Renshaw denied the material allegations of the Claimants' claim, asserting that:

1. The Friedrichs are wealthy, experienced and sophisticated participants in the securities markets, and were active in the management of and decisions affecting their account;

2. In the customer agreement executed by Claimants, they expressly agreed that confirmations and monthly account statements would be conclusive, if not objected to in writing. The Claimants received both confirmations and monthly statements, yet never objected to or questioned the objections;

3. Claimants were customers of Rodgers for four years while he was employed by Shearson Lehman Brothers, Inc. prior to his employment at Rodman & Renshaw. Claimants voluntarily transferred their account to Rodman & Renshaw to continue trading with him and their trading while at Shearson was similar to that now complained of at Rodman & Renshaw;

4. Rodman & Renshaw reasonably supervised its registered representatives and established procedures to detect the problems of the type alleged by Claimants, but cannot address alleged violations when customers do not avail themselves of these procedures by making timely objections or complaints in writing;

5. The pattern of investing was highly suitable given Claimants' expressed investment objectives of "growth" and "income". Claimants' investments were prudent and consistent with their expressed objectives, and the commissions and margin interest incurred were within and often times more favorable than industry norms; and

6. The new claims alleged in the Second Amended Claim were not filed within

any applicable limitations period and should be dismissed.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents for \$88,500.00 as reimbursement of their losses; \$27,000.00 for refund of all commissions paid; the sum of \$12,500.00 as disgorgement of interest paid by Claimants;; \$150,000.00 in punitive damages; and attorneys' fees and costs in the sum of \$105,000.00 as authorized by Missouri law.

Respondent Rodman & Renshaw requested complete dismissal of the claims, and an award of extended costs, including reasonable attorneys' fees incurred in responding to and defending the claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Rodgers did not file an executed submission agreement or appear at hearing. The Panel finds that Respondent Rodgers was properly served with the Statement of Claim and Notice of Hearing as required by the NASD Code of Arbitration Procedure and is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

On January 6, 1993, the Arbitrators granted Respondent Rodman & Renshaw's Motion to Dismiss for Lack of Specificity. Claimant was given leave to file a Second Amended Statement of Claim within thirty days of notice of the decision.

On April 13, 1993, the Panel denied Respondent Rodman & Renshaw's Request to Dismiss the Second Amended Statement of Claim, but determined that the matter would be considered at the hearing. Based upon the hearing on the merits, the Motion is moot.

At hearing, Respondent Rodman & Renshaw presented a Motion to Dismiss the Punitive Damage Claims. Upon review of the arguments, the Panel took the Motion under advisement. Based upon the decision on the merits, the Motion is moot.

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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed with prejudice and denied in its

entirety;

2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;

3. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) Pre-hearing conferences with One (1) arbitrator x \$300.00 per session = \$600.00; Eight (8) hearing sessions x \$750.00 per session = \$6,000.00; Total forum fees = \$6,600.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimants, Garland C. Friedrich and Virginia H. Friedrich. In addition, Garland C. Friedrich and Virginia H. Friedrich are liable for and shall pay to the NASD the sum of \$5,850.00 as additional forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Charles E. Jones, Esq.

June 7, 1995

Charles E. Jones, Esq.

Public Arbitrator

Chairperson

/s/ James L. Breckenridge

June 7, 1995

James L. Breckenridge

Public Arbitrator

/s/ Celia L. Hosler

June 7, 1995

Celia L. Hosler

Industry Arbitrator

For NASD Use Only

Date of Service of Award: June 7, 1995