

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Harold & Effie Lindner

Case No: 92-00150

Name of Respondent(s)

Cowen & Company
Richard Karasick
d/b/a Karasick Asset Management Company

REPRESENTATION

For Claimants, Harold and Effie Lindner ("Lindners"): Steven R. Reininger, Esq. of Rasco and Reininger.

For Respondents, Cowen and Company ("Cowen"): Jonathan Wolfert, Esq. of Kaplan, Thomashower & Landau.

For Respondents, Richard Karasick, individually and d/b/a Karasick Asset Management Company ("Karasick"): pro se.

CASE INFORMATION

Statement of Claim filed: January 14, 1992. Claimants' Submission Agreement signed: January 6, 1992.

Respondents Joint Statement of Answer filed: March 31, 1992. Respondents' Submission Agreements signed: April 9, 1992 by Karasick, and by Creighton H. Peet on behalf of Cowen on March 30, 1992.

HEARING INFORMATION

On November 27, 1992, in Fort Lauderdale, Florida, a pre-hearing conference lasting 1 session was conducted via telephone call with an arbitrator.

On December 15, 16 and 17, 1992, and June 22, 1993, in Fort Lauderdale, Florida, hearings lasting 11 sessions were conducted.

CASE SUMMARY

Claimants, alleged that they are an elderly retired couple, that Mr. Lindner is disabled and they are unsophisticated investors; that Claimants knew Karasick through Mr. Lindner's father; that the Lindners began the investments with money inherited from Mr. Lindner's mother; that the Lindners had accumulated \$900,000.00 by the time Mr. Lindner became disabled in 1981; that at that time the investment objectives were safety/preservation of principal with a reasonable rate of return; that all accounts were discretionary accounts managed by Respondents; that Respondents made misrepresentations of and omitted to state material facts; recommended and effected transactions in unsuitable securities including equities and options; that Respondents' mismanagement of Claimants' accounts resulted in losses; and, that Respondents' actions constituted breach of fiduciary duties, negligence, negligent supervision, breach of contract and, violation of Sections 517.301 and 211, Florida Statutes.

Respondents, denied all allegations of wrongdoing and alleged that Claimants were sophisticated investors who knowingly assumed the risks of trading securities; that Claimants' objectives were capital growth and appreciation; that Claimants were fully advised of the status of all investments and risks and selected the investments; that all accounts were profitable; and, that Claimants' losses were the result of unpredictable adverse market movement including the 1987 crash.

Respondents alleged the affirmative defenses of failure to state a claim; damages not result of matters alleged; any damage sustained was the result of Claimants' culpable conduct; failure to plead fraud with requisite specificity; bar by applicable statutes of limitation and/or laches and estoppel; and, ratification.

RELIEF REQUESTED

Claimants requested rescission and/or damages in excess of \$516,438.00 pursuant to Section 517.211, Florida Statutes; alternatively, Claimants requested compensatory damages in excess of \$320,721.00 jointly and severally; interest, attorneys' fees, costs, punitive damages and, other relief.

Respondents requested dismissal, costs, and attorney's fees.

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 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:

1. Respondents, Cowen and Karasick, are found liable, jointly and severally.
2. Claimants are found to have been comparatively negligent in the handling of their account and/or have partially failed to mitigate their damages; partially failed to use due diligence with respect to the transactions and acts complained of; and, partially failed to seasonably complain of or to disaffirm the transactions. Therefore, the award set forth below has been reduced accordingly.
3. Respondents, jointly and severally, shall pay to the Claimants compensatory damages in the amount of \$210,000.00.
4. Respondents, Cowen and Karasick, are also found liable, jointly and severally, and shall pay to the Claimants the further amount of \$50,000.00 for attorney's fees pursuant to Section 517.211, Florida Statutes; and \$8,364.77 for costs and expenses.
5. Respondents, Cowen and Karasick, are also found liable, jointly and severally, and shall pay to the Claimants punitive damages in the amount of \$20,000.00. The Panel bases its award of punitive damages on its findings that Respondents conducted themselves with reckless disregard for the rights of the Claimants. The Panel derives its authority to award punitive damages on the Federal Arbitration Act and the cases construing that Act.

OTHER COSTS

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 \$11,300.00 (one Pre-hearing conference x \$300.00 plus 11 sessions x \$1,000.00). The session fees are increased from \$750.00 per session to \$1,000.00, based on the amount in controversy in excess of \$500,000.00.
2. Respondents, Cowen and Karasick are hereby assessed \$11,300.00, jointly and severally, \$750.00 of which shall be paid directly to the Claimants, and \$10,550.00 of which shall be paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants for which the Respondents, jointly and severally, shall reimburse the Claimants by paying \$200.00 to them.
4. The NASD shall retain the session deposit of \$750.00 paid by the Claimants.

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

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Craig Edward Stein, Esq.

Public

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Abe Mintz

Public

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Richard D. Longacre

Industry

Date of Decision:

June 28, 1993