

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Herschel G. Levy, as custodian for
Erika Golub, Jennifer Garcia,
Mark Golub and Michelle Garcia

Case No. 92-00250

Name of Respondent(s)

Robyns Capital Corporation
Richard Monivis
Rosenkrantz Lyon & Ross, Inc.

REPRESENTATION

Claimant, Herschel G. Levy as Custodian ("Levy"): was pro se.

For Respondents, Rosenkrantz Lyon & Ross, Inc. ("Rosenkrantz") and Richard Monivis ("Monivis"): Donald Hanson, Esq. of Josephthal Lyon & Ross, Inc.

For Respondent, Robyns Capital Corp. ("Robyns"): Warren Schreiber of Robyns Capital Corp.

CASE INFORMATION

Statement of Claim filed: March 16, 1992. Claimant's Submission Agreement signed: May 11, 1992.

Respondents, Rosenkrantz and Monivis', Statement of Answer filed: June 22, 1992. Respondents' Submission Agreements signed: August 7, 1992 by Monivis and on August 7, 1992 by Michael Loew on behalf of Rosenkrantz.

Respondent, Robyns, did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code (see "Other Issues").

HEARING INFORMATION

On December 18, 1992, in Fort Lauderdale, Florida, a pre-hearing conference lasting one (1) session was conducted via telephone conference call with an arbitrator.

On January 22, 1993, in Fort Lauderdale, Florida, a hearing lasting one (1) session was conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for recommending a certain stock based on alleged inside information which recommendation was asserted to be unsuitable for Claimant's "Gift to Minors" trust accounts.

Respondents, Rosenkrantz and Monivis, denied all allegations of wrongdoing and alleged that Monivis never represented that he had inside information and the investment was suitable for Claimant's account.

Respondents, Rosenkrantz and Monivis, alleged the affirmative defenses of failure to state a claim, and that the stock was purchased prior to Claimant opening his account at Rosenkrantz.

Respondent, Robyns, failed to file an Answer and did not appear at the hearing.

RELIEF REQUESTED

Claimant requested damages in the amount of \$3,750.00, plus punitive damages.

Respondents, Rosenkrantz and Monivis, requested dismissal of the claim, plus costs.

Respondent, Robyns, failed to file an Answer.

OTHER ISSUES CONSIDERED & DECIDED

1. Jurisdiction exists pursuant to Section 12 of the NASD Code of Arbitration Procedure. Respondent, Robyns, 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 Arbitrator's Exhibit #2, this arbitrator finds service upon and adequate notice to Respondent, Robyns. The NASD has made every attempt to locate and serve Robyns with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

3. Respondent, Rosenkrantz Lyon and Ross, n/k/a Josephthal Lyon and Ross, was dismissed, with prejudice, from this proceeding, pursuant to Resenkrantz's Motion to Dismiss which was heard at the pre-hearing conference on December 18, 1992.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and Respondent, Robyns, neither appearing at the hearing nor having requested an adjournment thereof, notwithstanding its knowledge of this hearing as evidenced in the record of proceedings, the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Monivis, is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondent, Robyns, is found liable and shall pay to the Claimant the amount of \$1,000.00.
3. Claimant's request for punitive damages is denied.
4. Respondent's request for costs is denied.

OTHER COSTS

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$200.00 (one pre-hearing conference x \$100.00, plus one session x \$100.00 per session).
2. Claimant is hereby assessed \$100.00 for which the NASD shall retain the \$100.00 previously deposited in full satisfaction thereof.
3. Respondents, Monivis and Robyns, are hereby assessed \$100.00 jointly and severally, payable to the National Association of Securities Dealers, Inc.

4. The NASD shall retain the non-refundable filing fee of \$50.00 paid by the Claimant.

5. Respondent, Monivis, is also assessed the \$100.00 postponement fee for the hearing of December 28, 1992 which was postponed.


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

Arbitrator's Signature



Gregory J. Ersek, Esq. (P.A.)

Public

 OF GREGORY J. ERSEK, P.A.

Date of Decision:

2/23/93