

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Richard and Ghislaine Price

92-00740

Names of Respondents

Palm Beach Financial, Inc.
Peter S. Smith
Frederick B. Spears
Karen A. Lee
Larry J. Stanavitch

REPRESENTATION

Claimants, Richard and Ghislaine Price were represented by John P. Stetson, Esq. of West Palm Beach, Florida.

Respondent, Palm Beach Financial, Inc. did not enter an appearance.

Respondent, Peter S. Smith did not enter an appearance.

Respondent, Frederick Spears appeared pro se.

Respondent, Karen A. Lee did not enter an appearance.

Respondent, Larry Stanavitch appeared pro se.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on February 28, 1992.

Claimants, Richard and Ghislaine Price's Submission Agreement was signed on January 2, 1992.

A Statement of Answer was filed with the NASD by Respondent, Larry Stanavitch on May 1, 1992.

Respondent, Larry Stanavitch's Submission Agreement was signed on April 28, 1992.

Respondents, Palm Beach Financial, Inc. Peter Smith, Karen Lee and Frederick Spears failed to file either an Answer to the Claim or executed Submission Agreements with the NASD.

HEARING INFORMATION

The hearing was held on April 14, 1993 and lasted for two (2) sessions.

The hearing location was Ft. Lauderdale, Florida.

CASE SUMMARY

Claimants, Richard and Ghislaine Price ("the Prices") alleged that they were induced to invest in options transactions, including naked puts and calls by Respondents, Palm Beach Financial, Inc. ("Palm Beach Financial"), Peter Smith ("Smith") Frederick Spears ("Spears") Larry J. Stanavitch ("Stanavitch") and Karen Lee ("Lee"). The Prices alleged that options carried a high degree of risk and were unsuitable for them given their investment objectives, needs, economic experience and the fact that they had no experience with option trading prior to opening their account at Palm Beach Financial. The Prices alleged that misrepresentations regarding the risks of trading options were made to them and that omissions of disclosures regarding the risks and attendant speculation inherent in trading options also occurred. In addition, the Prices asserted that unauthorized trades in options occurred in their account. Additional causes of action asserted in the Statement of Claim included breach of contract, breach of fiduciary duty, negligence, failure to supervise and civil theft.

Respondent, Stanavitch alleged that the claim should be dismissed as to him because all of the allegations of wrongdoing took place prior to Stanavitch's registration with Palm Beach Securities. In addition, Stanavitch denied all of the allegations of the Statement of Claim.

Respondents, Palm Beach Securities, Smith, Lee and Spears did not file Answers to the Statement of Claim.

RELIEF REQUESTED

The Prices requested rescission for all securities still held in their account, damages for out of pocket losses, interest at the legal rate pursuant to Section 517.211, F.S., lost earnings which the account would have earned from April of 1988 until 1992, treble out of pocket losses

pursuant to Section 772.11, F.S., for a total award of \$255,000.00, attorney's fees, punitive damages, prejudgment interest and such other relief as is fair and just.

Respondent, Stanavitch requested that the claim be dismissed as to him.

Respondents, Palm Beach Financial, Spears, Smith and Lee did not file Answers with affirmative relief requests.

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 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.

Respondents, Palm Beach Financial, Peter Smith and Karen Lee failed to appear at the hearing on April 14, 1993. After hearing of the attempts made by the NASD to serve these parties with notice of the proceeding in accordance with sections 25 and 26 of the NASD Code of Arbitration Procedure ("NASD Code"), the panel determined that Palm Beach Financial and Peter Smith would be dismissed without prejudice from the case as party Respondents. The panel determined that Respondent, Lee had received notice of the hearing in accordance with Sections 25 and 26 of the NASD Code of Arbitration and determined to proceed with the hearing in her absence pursuant to its authority in Section 29 of the NASD Code of Arbitration Procedure.

At the hearing, the Prices asserted a motion for default against Lee and Spears. The panel determined to deny the motion as against Spears and took the motion under advisement as to Lee. Spears was allowed to testify and defend the claim. The panel also found that Spears and Lee will be bound by the decision of the arbitrators on all issues submitted despite their failure to file an Answer or executed Submission Agreement. The panel held that Spears and Lee were obligated to arbitrate this matter pursuant to Section 12 of the NASD Code of Arbitration Procedure.

The Prices voluntarily dismissed with prejudice their claims asserted against Stanavitch in a pleading filed with the NASD on March 19, 1993. The panel noted this for the record and accordingly, the arbitration panel did not consider the Price's claim asserted against Stanavitch.

In closing argument, Claimants' counsel moved to have the panel reconsider dismissal as to Palm Beach Financial and Peter Smith. Upon further consideration, the panel has granted the motion as to Palm Beach Financial due to its failure to maintain a registered agent as required by Florida law. The motion was denied as to Peter Smith.

AWARD

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

1. The motion for entry of default as to Karen Lee is hereby granted;
2. The Prices shall recover the sum of \$96,000.00 from Respondents, Palm Beach Financial, Spears and Lee, jointly and severally;
3. Said Respondents are found to have violated Section 517.301, F.S. as to the handling of the Prices' accounts;
4. The Prices' claims for punitive damages and treble damages pursuant to Section 772.11, F.S. are denied; and,
5. Other than Forum Fees which are addressed below, the award includes interest and attorney's fees incurred by the Prices in this matter.

FORUM FEES

Pursuant to Section 43c of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit previously paid to the NASD by the Prices. Additional Forum Fees in the amount of \$750.00 are assessed jointly and severally against Spears, Lee and Palm Beach Financial. Forum Fees were calculated on the basis of \$750.00 per hearing session for two hearing sessions.

Additional Forum Fees assessed to the parties are payable to the NASD.

Concurring Arbitrators' Signatures
Name

/s/
Lewis J. Levey, Esq.
Presiding Chairman
Public Arbitrator

4/16/93
Dated

/s/
Andrew Bartfay
Panelist
Public Arbitrator

4/17/93
Dated

/s/
Richard M. Kowalske
Panelist
Industry Arbitrator

4/16/93
Dated

Date Award Served by the NASD: May 5, 1993