

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Rose M. Palano

vs.

Case #
92-02254

Name of Respondent(s)

Bailey, Martin & Appel Inc

REPRESENTATION

For Claimant: E. Earle Rugg, Jr., Esq. of the law firm of Rugg & Tallman Associates.

For Respondent Ernst & Company: Michael H. DuBoff of the law firm of Salon, Marrow & Dyckman.

For Respondents, Bailey, Martin & Appel/Financial Equities: John Stoffere of Bailey, Martin & Appel/Financial Equities.

Respondent Howard Appel did not appear personally or by counsel.

CASE INFORMATION

Statement of Claim filed: July 8, 1992.

Claimant's Submission Agreement signed on: March 28, 1992.

Respondent Ernst & Company's Statement of Answer filed on: September 22, 1992.

Respondent Ernst & Company's Submission Agreement signed on: August 24, 1992.

Respondent Bailey, Martin & Appel did not file a Statement of Answer or execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

Respondent Financial Equities did not file a Statement of Answer or execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

Respondent Howard Appel did not file a Statement of Answer or execute a Submission Agreement as required pursuant to Section 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Date/Session: May 26, 1993 - 1 session

Hearing Location: NASD Inc., Boston, MA.

CASE SUMMARY

Claimant, Rose M. Palano, alleged that on November 15, 1989 she gave permission for a trade of 500 shares of common stock of Cedar Group at \$10.00 or the equivalent of \$5,000.00. Claimant alleged that she also confirmed the trade for 5,000 bonds of Cedar Group at \$1.00, or the equivalent of \$5,000.00. Claimant alleged that she did in fact receive her 500 shares of common stock, but after repeated changed confirms and mistakes by Ernst & Co. and Financial Equities, Inc., she received only 1,000 bonds.

Respondent, Ernst & Company ("Ernst") maintained that during the period April 14, 1987, through March, 1991, Ernst acted as a clearing broker on a disclosed basis for Respondent Bailey, Martin & Appel ("Bailey Martin") pursuant to a written clearing agreement, which was disclosed to Claimant in each monthly statement and transaction confirmation which were sent to Claimant.

Ernst also maintained that all purchases, sales and other securities transactions of any nature were made directly between Claimant and, Bailey Martin and that Ernst merely did the "back office" portion of each trade, i.e., where applicable executed an order on the appropriate Exchange and sent confirmations and monthly statements on behalf of Bailey Martin pursuant to the Clearing Agreement.

Ernst maintained that except for sending confirmations of all trades and monthly statements, they had no direct communication with Claimant, nor did Ernst's records reflect any direct contact by Claimant or anyone acting on her behalf with Ernst during the period November, 1989 through January, 1990. Ernst also maintained that the alleged error complained of by the Claimant was done solely by and was the sole responsibility of Bailey Martin and/or its representatives.

Ernst further maintained that although Ernst attempted to assist Claimant in connection with her alleged claim against Bailey Martin, Ernst did not have any direct contact with Claimant with regard to the purchase of the Cedar bonds.

RELIEF REQUESTED

Claimant requested actual and compensatory damages in the amount of \$4,200.00 plus interest at fair market value.

Respondent, Ernst & Company requested that the Statement of Claim be dismissed in its entirety and a determination that if any liability exists to the Claimant, it is solely due from Bailey, Martin & Appel/Financial Equities and not Ernst & Company.

OTHER ISSUES CONSIDERED & DECIDED

Claimant agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

Prior to the commencement of this hearing, Claimant advised the NASD that she had settled her dispute with Ernst.

Claimant asserted a Motion to add Howard Appel as a Respondent on March 8, 1993. This Arbitrator granted the Claimant's motion on March 23, 1993.

By letter dated May 20, 1993, Howard Appel requested that he be allowed to participate in the hearing by telephone. Claimant objected to this request by letter dated May 25, 1993. This Arbitrator denied Howard Appel's request and the NASD notified him on May 25, 1993.

Nonetheless, Howard Appel did not appear at the hearing scheduled for May 25, 1993. This Arbitrator determined that he received notice and pursuant to Section 29 of the Code proceeded with the hearing after waiting forty-five minutes for him to appear.

AWARD

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

That Respondents, Bailey, Martin & Appel, Financial Equities, and Respondent Howard Appel, are jointly and severally liable to Claimant, Rose Palano, in the amount of TWO THOUSAND DOLLARS AND NO CENTS (\$2,000.00) and that Respondents pay said amounts within the next ten (10) days.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed against the remaining Respondents, jointly and severally.

\$50.00	Non-refundable filing fee.
\$100.00	1 session x \$100.000

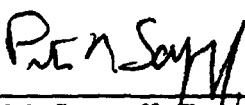
Claimant deposited \$150.00 and is entitled to a refund. Respondents shall satisfy the assessment of fees by reimbursing Claimant \$150.00.

SOLE ARBITRATOR

Peter M. Sapaoff

Public Arbitrator

Arbitrator's Signature



Peter M. Sapaoff, Esq.

Date of Decision: July 6, 1993