

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jon L. Weingart, M.D., individually, and Jane Weingart, individually and Richard Zahn, M.D. and Jon L. Weingart, M.D., trustees of the Surgical & Medical Neurology Associates, Inc. Profit Sharing and Pension Trusts

92-03819

Name of Respondents

Butcher & Singer, Inc. (n/k/a Wheat First Butcher Singer, Inc.)
George S. Hoffman

REPRESENTATION

For Claimants Jon L. Weingart, M.D., individually, and Jane Weingart, individually and Richard Zahn, M.D. and Jon L. Weingart, M.D., trustees of the Surgical & Medical Neurology Associates, Inc. Profit Sharing and Pension Trusts ("Claimants"): Alan M. Petrov, Esq. and M. Terence Cawley, Esq. of the law firm of Gallagher, Sharp, Fulton & Norman, Cleveland, Ohio

For Respondents Butcher & Singer, Inc. (n/k/a Wheat First Butcher Singer, Inc.) and George S. Hoffman ("Hoffman"): Jonathan M. Harris, Managing Director and General Counsel of Wheat First Butcher Singer, Inc.

CASE INFORMATION

Statement of Claim filed: November 9, 1992.

Claimants' Submission Agreement signed on: October 16, 1992

Joint Statement of Answer filed by Respondents Butcher & Singer ("B&S") and Hoffman (collectively referred to as "Respondents") on: February 1, 1993

Hoffman's Submission Agreement signed on: December 21, 1992

B&S's Submission Agreement signed on: December 15, 1992

HEARING INFORMATION

Hearing Dates/Sessions:

September 26, 1994 - two sessions
September 27, 1994 - two sessions

Hearing Location: NASD District Office, Cleveland, Ohio

CASE SUMMARY

Claimants alleged, among other things, that Claimants relied upon Respondents to provide expert advice relating to investments and asset management and relied upon Respondents to provide accurate information concerning the performance of investments. Claimants alleged that Respondents breached the duties owed to Claimants concerning the accounts. Claimants alleged that Respondents made misrepresentations to Claimants with respect to accounts and concealed information pertaining to the accounts. Claimants alleged that Respondents misrepresented to Claimants that the accounts were earning, at a minimum, an average of 15% return on investments. Claimants alleged that Respondents charged excessive commissions. Claimants alleged that Respondents engaged in improper trading on margin. Claimants alleged that Respondents did not acquire or purchase investments that Claimants specifically instructed be obtained. Claimants alleged Respondents conduct was willful and/or intentional, fraudulent and was undertaken to encourage Claimants to make further investments with or through Respondents. Claimants alleged that B&S ratified, adopted and approved the willful, intentional and/or fraudulent conduct of Hoffman. Claimants additionally alleged that the conduct of Respondents violated the Securities Exchange Act of 1934 and the rules promulgated thereunder.

Respondents categorically denied all allegations of wrongdoing and specifically maintained that Claimants accounts were properly handled at all times and that Claimants accounts were profitable. Respondents maintained, among other things, that full disclosures were provided to Claimants at all times and that Respondents never made any misrepresentations to Claimants. Respondents maintained that the investments recommended to Claimants were consistent with the stated goals and objectives. Respondents noted that Claimants alleged three alleged improprieties: a misrepresentation concerning the performance of the accounts, excessive commissions charges and improper trading on margin. Respondents maintained that these allegations are without merit. Respondents maintained that Claimants claims are barred by applicable Statutes of Limitations. Respondents maintained that Claimants claim is barred by the principles of waiver, laches and estoppel. Respondents maintained that all transactions were ratified by Claimants, that Claimants failed to exercise the degree of care required of prudent investors and that Respondents acted properly and in good faith with regard to Claimants' accounts. Respondents maintained that Claimants would be barred from recovery due to contributory negligence and assumption of risk. Respondents maintained that Claimants failed to mitigate their damages.

RELIEF REQUESTED

Claimants in their pleadings requested damages in the amount of \$250,000.

Respondents requested that Claimants claim be dismissed in its entirety and that Respondents be awarded their costs, fees and expenses incurred in defending this claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondents made a motion to dismissed maintaining that Claimants' claim was barred by the applicable Statutes of Limitations. This Motion was denied by the Panel and the case was decided on the merits.

The parties agreed that the panel could sign counterpart copies of the Award.

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:

1. That Claimants' claim is denied in its entirety.
2. That the parties shall bear their respective costs, including attorneys' fees, except as specifically stated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$750 = \$3,000 in hearing session fees accrued

Forum Fees Assessed Against: Claimants and Respondents are equally assessed forum fees. Claimants are assessed forum fees in the amount of \$1,500. Claimants are entitled to offset this amount with their hearing session deposit of \$750., so that the amount due from the Claimants is \$750. Respondents Hoffman and B&S are jointly and severally assessed forum fees in the amount of \$1,500.

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

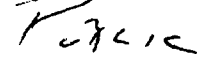
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Concurring Arbitrator's Signature

Name


Joseph W. Grossner

Public/Industry

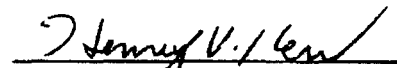


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Concurring Arbitrator's Signature
Name

Public/Industry


Henry V. Kerr, Esq.

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Concurring Arbitrator's Signature
Name


Robert C. Devlin, Chairman

Public/Industry

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