

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert and Ann Fischer

92-04011

Name of Respondents

Berkeley Securities Corporation
Avin E. Bakal

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 27, 1992, Claimants Robert and Ann Fischer, who appeared Pro Se, alleged that on June 12, 1992 Claimant Robert Fischer telephoned Respondent Berkley Securities Corporation to question why the shares of EuroDisney which their firm recommended that they purchase three months earlier were declining so precipitously in value. Claimants further alleged that EuroDisney was descending through reasonable stops that might have been set yet no one from Respondent Berkley Securities Corporation attempted to counsel them on this investment. Claimants contended that when Respondent Avin E. Bakal became their registered representative because their previous one was no longer employed with Respondent Berkley Securities Corporation, Respondent Avin E. Bakal advised them to sell EuroDisney and recommended the purchase of 10,000 shares of AquaSciences International at .23 a share. Claimants further contended that Respondent Avin E. Bakal failed to represent the risks involved with the AquaSciences purchase whereby it promptly lost 100% of its value, was suspended from trading on the NASDAQ Small Issues and is no longer traded at all. Claimants asserted that Respondent Avin E. Bakal grossly misrepresented the considerable risk in purchasing this security, whereby it was totally unsuitable and a speculative investment. Claimants further asserted that Respondents Berkley Securities Corporation and Avin E. Bakal are liable for failing to provide counsel after their disastrous EuroDisney recommendation and for negligently recommending the purchase of AquaSciences, thus should reimburse Claimant their losses.

Respondent Berkeley Securities Corporation, by and through Phyllis Henderson, maintained that Claimants Robert and Ann Fischer opened their account with them in March, 1992 and on

March 11, 1992 they purchased 100 EuroDisney SCA at 29 for a total investment of \$2,876.50. Respondent Berkeley Securities Corporation further maintained that Respondent Avin E. Bakal was, at all times, the broker of record on Claimants' account. Respondent Berkeley Securities Corporation contended that Respondent Avin E. Bakal discussed with Claimants their investment objectives at length whereby Claimants affirmed that they had diverse objectives when they signed their New Account Form, at which time, Respondent Avin E. Bakal told Claimants that because he had originally recommended that Claimants invest in a conservative, long-term growth investment, EuroDisney, and that Claimants were not pleased that EuroDisney had not performed in the manner they had hoped, Respondent Avin E. Bakal felt it might be a good idea for Claimants to invest in a more speculative idea that had the potential of significant price appreciation. Respondent Berkeley Securities Corporation further contended that in light of Claimants dissatisfaction with their EuroDisney, Respondent Avin E. Bakal recommended they sell their EuroDisney position and purchase AquaSciences. Respondent Berkeley Securities Corporation asserted that they cannot protect and indemnify its clients against loss, and Respondent Avin E. Bakal made his recommendations in good faith whereby Claimants made investment decisions according to their expressed investment objectives. Respondent further asserted that Claimants acknowledge that all trades were authorized and at no time has Respondent Avin E. Bakal been accused of exerting, undue pressure on them to influence their decisions and Respondents serviced Claimants' account with care and consideration.

Respondent Avin E. Bakal, who appeared Pro Se, maintained that in early March, 1992 he spoke to Claimants Robert and Ann Fischer about their investment objectives and personal financial situation whereby Claimant Robert Fischer told him that their investment objectives were very broad in scope and rather undefined, at which time, Claimant Robert Fischer stated that they wanted to invest diversely; for growth, speculation and income. Respondent Avin E. Bakal further maintained that on or about March 11, 1992 he recommended that Claimants purchase 100 shares of EuroDisney at 29, a modest investment of \$2,900.00. Respondent Avin E. Bakal contended that Claimant Robert Fischer contacted him in June because they were quite upset that EuroDisney had dropped somewhat in price whereby Respondent Avin E. Bakal explained that Goldman, Sachs & Company issued a "sell" recommendation on EuroDisney and suggested that maybe they would prefer to invest in something more speculative with greater rapid appreciation potential as opposed to their first investment in long-term growth situation, at which time, he suggested AquaSciences and Claimants instructed him to sell their EuroDisney in order to reinvest the proceeds in AquaSciences. Respondent Avin E. Bakal contended that shortly thereafter, he resigned his position at Respondent Berkeley Securities Corporation whereby Claimants decided to transfer their account to his new firm in order for him to continue to service their account, accordingly he believed that Claimants were pleased with his service. Respondent Avin E. Bakal further contended that he made all his recommendations based on publicity disseminated information and never exerted any pressure on Claimants to effect any transaction, whereby all recommendations were in accordance to Claimants stated investment objectives.

RELIEF REQUESTED

Claimants Robert and Ann Fischer requested \$3,100.00 in actual damages.

Respondent Berkeley Securities Corporation requested the claim be dismissed.

Respondent Avin E. Bakal requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jerome Goodgal, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on November 20, 1992, by the Respondent Berkeley Securities Corporation on February 3, 1993 and by the Respondent Avin E. Bakal on February 3, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants Robert and Ann Fischer against Respondents Berkeley Securities Corporation and Avin E. Bakal are dismissed.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Robert and Ann Fischer shall be retained by the NASD, Inc.

AFFIRMATION

I, JEROME GOODGAL, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

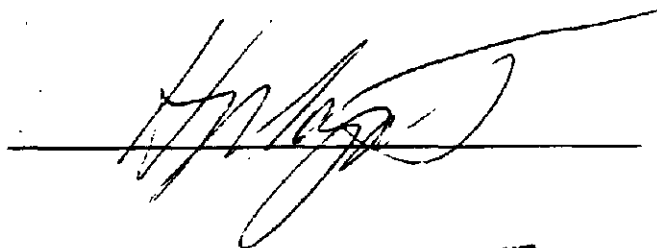
DATE OF DECISION: May 28, 1993

STATE OF: New Jersey

SS:

COUNTY OF: BESSAIC

On this 25th day of May 1993, before me personally appeared Jerome Goodgal to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

A handwritten signature in dark ink, appearing to read 'H. Nagelhoff', is written over a horizontal line.

HENRY NAGELHOFF
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES FEBRUARY 1, 1995