

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Phillip H. Sturtevant, Executor/of the Estate
Of Flora P. Edgar

93-00613

Name of Respondents

Marion Bass Securities Corporation
Jeff Roy

REPRESENTATION

For Claimant Phillip H. Sturtevant, Executor of the Estate of Flora P. Edgar ("Claimant"): Kevin J. Osterkamp of the law firm of Roetzel & Andress, L.P.A.

For Respondents Marion Bass Securities Corporation ("MBSC") and Jeff Roy ("Roy"): Matthew R. Joyner, Esq. of the law firm of Rayburn, Moon & Smith, P.A. and John L. Latham of the law firm of Nelson Mullins Riley & Scarborough, P.C.

CASE INFORMATION

Statement of Claim filed: February 16, 1993
Amended Statement of Claim filed: July 9, 1993
Claimant's Submission Agreement signed on: October 22, 1992

Joint Statement of Answer filed by Respondents MBSC and Roy (collectively referred to as "Respondents"): April 26, 1993
MBSC's Submission Agreement signed on: May 12, 1993
Roy's Submission Agreement signed on: March 29, 1993

HEARING INFORMATION

Hearing Dates/Sessions:

November 29, 1993 - two sessions
November 30, 1993 - two sessions
January 24, 1994 - three sessions
January 25, 1994 - two sessions

Hearing Location: Columbus, Ohio

CASE SUMMARY

Claimant alleged, among other things, that Respondents breached their fiduciary duties owed to Flora P. Edgar ("Edgar"). Claimant alleged that Roy and MBSC placed Edgar in limited partnerships which were unsuitable for Edgar and did not meet her stated investment objectives. Claimant alleged that Respondents through their negligent management of Edgar's property breached their contract with Edgar. Claimant alleged that Respondents breached their covenant of good faith and fair dealing that they owed to Edgar. Claimant alleged that Respondents knew or should have known that Claimant was an individual of diminished cognitive capacity. Claimant alleged that the investment strategy employed by Respondents was for their benefit at the expense of Edgar's well-being. Claimant alleged that Respondents recommendation to sell Edgar's Farmers Group Incorporated ("FGI") stock at a price substantially below the call price of \$75 per share exercised by FGI was ill advised. Claimant alleged that Respondents failed to take into consideration or to properly advise Edgar of the adverse tax consequences Respondents' investment advise would have on Edgar or her estate.

Respondents categorically denied all allegations of wrongdoing and maintained among other things, that Edgar's investments at the time of Roy's initial meeting with her were unduly concentrated in FGI. Respondents maintained that their recommendation of diversification was appropriate given Edgar's investment needs and objectives. Respondents maintained that FGI had become a risky investment as it was the subject of a bitter hostile takeover. Respondents also maintained that they made recommendations to Edgar, that she agreed with Respondents' recommended portfolio and that she authorized its implementation. Respondents maintained that Claimant is using 20/20 hindsight in holding Respondents responsible for its prudent investment advice. Respondents denied that they knew or should have known that Edgar suffered diminished mental capacity. Respondents maintained that Edgar's taxes were prepared by her certified public accountant (CPA), that Edgar received confirmations of all sales of her securities, and that she bore the responsibility of communicating with her CPA. Respondents maintained that they did not have any duty to communicate with Edgar's CPA.

RELIEF REQUESTED

Claimant requested: compensatory damages in the amount of \$500,000, punitive damages in the amount of \$1,500,000, interest, reasonable attorneys' fees and costs.

Respondents requested: that Claimant's claim be denied in its entirety and that all costs of this arbitration be borne by Claimant.

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 original(s) remain on file with the NASD.

That the Panel considered and decided pursuant to Section 39(b) of the Code of Arbitration Procedure ("Code") to deny Claimant's request to file his Second Amended Statement of Claim.

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 Respondents MBSC and Roy are jointly and severally liable to the Claimant and shall pay to the Claimant the sum of \$96,000; inclusive of interest.
2. That Claimant's request for punitive damages is denied in its entirety.
3. That the parties shall bear their own costs including attorneys' fees, except as specifically provided for herein.

FORUM FEES

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

9 sessions X \$1,000 = \$9,000 minus hearing session deposit of \$750
= net \$8,250 due.

Forum fees Assessed Against: Respondents MBSC and Roy jointly and severally so that they shall pay forum fees in the amount of \$8,250.

Sturtevant Award
Case No. 93-00613
Page 4

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

Concurring Arbitrator's Signature
Name

George W. Humm
George W. Humm

Public/Industry

Industry

NASD Date of Decision: February 15, 1994

Sturtevant Award
Case No. 93-00613
Page 4

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Inc.

Concurring Arbitrator's Signature
Name

Ralph J. Lorenzetti
Ralph J. Lorenzetti

Public/Industry

PUBLIC

NASD Date of Decision: February 15, 1994

Sturtevant Award
Case No. 93-00613
Page 4

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Inc.

Concurring Arbitrator's Signature
Name

Jerome B. Haddox
Jerome B. Haddox, Esq.
Chairman

Public/Industry

Public

NASD Date of Decision: February 15, 1994