

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Wien Securities, Inc.

93-00787

Name of Respondent

Donna Lamberti

REPRESENTATION

For Claimant: Herbert M. Jacobi, Esq., a sole practitioner.

For Respondent: Thomas J. McCabe, Esq., a sole practitioner.

CASE INFORMATION

Statement of Claim filed: March 1, 1993.

Claimant's Submission Agreement signed on: February 4, 1993.

Statement of Answer filed by Respondent Donna Lamberti on: September 23, 1993.

Respondent Donna Lamberti's Submission Agreement signed on: February 2, 1994.

HEARING INFORMATION

Hearing Date/Sessions: February 2, 1994 / Two Sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that Respondent was an employee of Claimant, and pursuant to her employment contract with Claimant was required to pay a fraction of certain expenses relating to her employment out of her profit and loss account. These expenses included, inter alia, 33 1/3 % of correspondent fees, 33 1/3 % of dealer relation fees, 33 1/3 % of ticket charges, 33 1/3 % of trading losses incurred by Respondent and 50% of all medical insurance coverage. Upon leaving the employ of Claimant in October, 1989, Respondent was allegedly indebted to the Claimant for the sum of \$8,902.38 as a result of these and other expenses. To date, the debt has not been satisfied and this action has been taken to pursue the unsatisfied debt.

Respondent alleged that after profitably trading as an employee of Claimant for over a year, she was asked by Claimant's president to terminate her employment with Claimant and to liquidate the positions in her account as expeditiously as possible. Respondent admits that losses were suffered as a result of this liquidation but insists that she made every effort to preserve the value of the account. Furthermore, Respondent claims that she never consented to personal liability for any losses resulting from the expedited liquidation, nor had she any reason to believe that she would be held responsible for such losses.

RELIEF REQUESTED

Claimant(s) requested: (1) \$8,902.38 in compensatory damages.
(2) interest.
(3) attorney fees.
(4) costs.
(5) such other relief as justice requires.

Respondent(s) requested: (1) dismissal of the claim in its entirety.
(2) attorney fees.
(3) costs.
(4) such other relief as the panel deems proper.

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) The Statement of Claim is hereby dismissed in its entirety.
- 2) Each party shall bear their respective costs of this action, including attorney's fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

\$500.00 Non-refundable filing fee
\$600.00 Hearing Session fees (2 sessions x \$300.00)

- 1) Total forum fees in the amount of \$1,100.00 are hereby assessed against the Claimant. Claimant is entitled to offset this amount with the \$1,100.00 previously paid to the NASD, Inc.

Arbitrator's Signature
Name

Maive R. Giovati

Maive R. Giovati, Esq.
Industry Chairperson

Date of Decision: March 10, 1994