

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between
FAITH K. DIBBLE and ROBERT E. DIBBLE, SR.
Claimants
v.

NO. 93-00996

INVESTMENT TIMING & RESEARCH, INC. and
PETER C. BUCCHIERI
Respondents

REPRESENTATION

For Claimants: Ronald L. Cheyney, Esq., Boston,
MA

For Respondents: Grover S. Parnell, Jr., Esq. of
Davis, Malm & D'Agostine, P.C.,
Boston, MA 02108

CASE INFORMATION

Statement of Claim dated: March 12, 1993

Claimant's Submission Agreement signed March 13, 1993

No submission agreement or answer was filed by the Respondents prior to the hearing. A motion to bar defenses was filed on November 14, 1993 on behalf of the respondents and was resubmitted by letter dated January 26, 1994. Respondents submitted a letter in response on January 27, 1994. The response effectively mooted the motion, as no witnesses testified other than the individual parties.

HEARING INFORMATION

Hearing Date/Sessions: February 23, 1994--Two Sessions

Hearing Location: Boston, Massachusetts

The parties agreed at the hearing that the award to be entered by the arbitrators may be executed in counterpart copies and to receive conformed copies of the award, with the originals to remain on file at the offices of the Association.

POST-HEARING PROCEEDINGS

The arbitrators conducted a telephone conference on February 28, 1994 and invited further submissions from the parties by an order dated that day.

Claimants submitted a post-hearing brief and a further affidavit of Faith and Robert Dibble on March 13, 1994. Counsel for the respondents replied by letter dated April 19, 1994 requesting additional time to respond and the reopening of the hearing for further testimony in response to the affidavits. Counsel for the Claimants filed a letter in opposition April 20. These papers were transmitted to the arbitrators by the Association on April 25, 1994.

The arbitrators conducted a further telephone conference on May 2, 1994, and entered an order that day denying the request to reopen the hearing and that day directing respondents to file any further papers on or before May 10, 1994.

Respondents submitted a reply to the Association on May 10, 1994. It was transmitted to the arbitrators on May 11, 1994. The arbitrators conducted a further telephone conference on May 19, 1994.

CASE SUMMARY

Claimants alleged that Respondents engaged from 1989 through late 1991 in excessive and unsuitable trading in an account with a maximum value of approximately \$162,000 as of May 1, 1989. Claimants (a business owner and his wife who retired in the late 1980's) entered into a discretionary trading agreement with Respondents¹ in 1987, at which time Respondents held equity securities with a value of approximately \$42,000. Claimants

¹ The corporate respondent was then known as Investment Timing and Research, Inc. It is now known as Bucchieri Asset Management Inc., which appeared at the hearing and acknowledged it is the successor to Investment Trading and Research, Inc.

contributed an additional \$38,000 derived from the sale of their business into the discretionary account in mid-1988. They sold \$62,000 of mutual fund assets at Respondent's suggestion for the purpose of placing additional funds into the account in April, 1989. Account opening forms showed respondents to have an annual income of \$24,000 and net assets (including personal residences and rental real estate) of \$410,000 as of the late 1980's.

Beginning with the liquidation of Claimant's mutual fund accounts, Respondents adopted an aggressive strategy of trading in equity securities in 1989. Tax schedules prepared by an accounting firm affiliated with the Respondents show that gross sales of securities increased from \$93,000 in calendar 1988 to approximately \$400,000 in calendar 1989, \$372,000 in calendar 1990 and \$1.2 million in calendar 1991. During this period, the equity value of the account managed by Respondents decreased from \$162,000 as of April 28, 1989 to approximately \$110,000 as of the termination of the discretionary agreement in January, 1992.

Respondents asserted at the hearing that they managed the Claimants' account in an appropriate manner consistent with the Claimants' investment objectives and the discretion given them in their agreements with Claimants. Respondent also testified, however, that he followed similar investment strategies with virtually all the accounts he managed. Respondents further asserted Claimants had received copies of confirmation slips and monthly statements, together with occasional letters describing Respondents' current investment strategy. Claimants acknowledged their receipt of both confirmations and monthly statements and they had made no complaints concerning the management of the account before closing the account in 1992.

RELIEF REQUESTED

Claimants requested damages in the approximate amount of \$90,000 attributable to trading losses, excessive commissions and management fees and lost investment income in 1990 and 1991, together with treble damages under Chapter 93A of the Massachusetts General Laws, attorneys' fees at common law and under Chapter 93A, and costs.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and through post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Damages are awarded for the Claimants and against Peter C. Bucchieri and Bucchieri Asset Management, Inc. in the amount of \$15,000.00, with interest at the rate of 12% as provided for by the laws of the Commonwealth of Massachusetts from January 1, 1990 through the date of payment. The record shows that Respondents adopted an unsuitable trading strategy for Claimant's account in violation of the Rules of Fair Practice, notwithstanding the discretion granted by Claimants and their apparent acquiescence during the period in which the trades took place.

2. No award is made on any other claim, including claims for multiple damages under Chapter 93A of the General Laws of the Commonwealth of Massachusetts and attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and any deposits previously paid shall be applied to the fees assessed.

1. The NASD has received and shall retain the \$200.00 non-refundable filing fees paid by the Claimant;


2. The NASD has received and shall retain the \$750.00 hearing session deposit paid by the Claimants ;

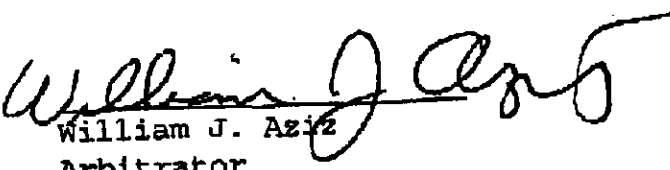
3. Claimant is assessed a \$200 non-refundable filing fee;

4. Forum fees in the amount of \$1500 for two hearings at \$750 per session are assessed against Respondents Peter C. Bucchieri, and Bucchieri Asset Management, Inc., with Respondents to reimburse Claimants the \$500 already paid.

Fees in excess of those to be reimbursed to Claimants are payable to the National Association of Securities Dealers, Inc.

Arbitrators' Signatures


Edward R. Wiest
Chairperson


William J. Aziz
Arbitrator

Lucy J. Karl
Arbitrator

Executed on:

~~Date of Decision~~: May 20, 1994

Date of Decision: June 7, 1994

Fees in excess of those to be reimbursed to Claimants are payable to the National Association of Securities Dealers, Inc.

Arbitrators' Signatures

Edward R. Wiest
Chairperson

William J. Aziz
Arbitrator

Lucy J. Karl
Lucy J. Karl
Arbitrator

Date of Decision: June 7, 1994