

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Saul Robbins
Reina Robbins
Kenneth Adelberg
Morton Adelberg

93-01601

Name of Respondents

Butcher & Singer, Inc.
Robert P. Kiep, III

REPRESENTATION

For Claimants Saul Robbins, Reina Robbins, Kenneth Adelberg and Morton Adelberg (collectively "Claimants"): Mr. Stuart J. Guber of Berger & Montague, P.C., Philadelphia, Pennsylvania.

For Respondents Butcher & Singer ("B&S") and Robert P. Kiep ("Kiep") (collectively "Respondents"): Jonathan M. Harris, Esq., of Wheat First Butcher Singer, Inc., Richmond, Virginia.

CASE INFORMATION

Statement of Claim filed: April 20, 1993.

Saul Robbins and Reina Robbins', Submission Agreement signed on:
March 24, 1993.

Kenneth Adelberg and Morton Adelberg's Submission Agreement signed on:
March 26, 1993.

Statement of Answer filed by Respondents on: July 6, 1993.

Respondent's Submission Agreement signed on: June 18, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: June 22, 1994 - two sessions
 June 23, 1994 - two sessions
 June 24, 1994 - two sessions

Hearing Location: Holiday Inn - Philadelphia, Pennsylvania

CASE SUMMARY

Claimants alleged, among other things, that they collectively purchased Four Hundred Thousand Dollars and 00/100 (\$400,000) of face amount Meritor Savings Bank 12% Subordinated Capital Notes (the "Bonds"). Claimant Reina Robbins alleged that she was a housewife and an unsophisticated investor who relied on her husband for investment decisions. Claimant Morton Adelberg alleged that he was a retiree and an unsophisticated investor who relied on his son for investment decisions. Claimants Saul Robbins, retiree, and Kenneth Adelberg alleged that they advised Kiep that Claimant's investment objective was a 10-15% annual return with a preservation of capital.

Claimants alleged that Kiep failed to disclose that the Bonds were payable at maturity in common or preferred stock of Meritor Savings Bank rather than cash and that there was no guarantee upon maturity that they would receive the face amount. Claimants alleged that Kiep negligently made misleading representations of the Bonds because of his failure to disclose the unusual payout feature of the Bonds. Claimants alleged that they did not receive a prospectus for the Bonds prior to their purchase. Claimants alleged that had they known the Bonds were payable in stock and the unusual risks involved, they would not have made the investments for their IRA's. Claimants alleged that Kiep breached his fiduciary duty by recommending an unsuitable investment for their IRA accounts. Claimants alleged that B&S negligently failed to properly supervise the handling of the account.

Respondents categorically denied all allegations of wrongdoing. Respondents maintained that Claimants were sophisticated and savvy investors who were fully aware of the risks associated with the "junk" Bond transaction. Respondents maintained that Kenneth Robbins followed the Bonds for four months prior to instructing Kiep to purchase them. Respondents maintained that the trades were unsolicited. Respondents maintained that Claimants sought returns on their investments of 15-20%.

Respondents maintained that the losses experienced by Claimant were not due to its conversion feature but to the collapse of the underlying institution and its default on the bonds. Respondents maintained that the conversion feature was immaterial as losses would have been incurred regardless. Respondents maintained that at all time Claimants were aware of the Bonds' declining market value, and

took no steps to mitigate the losses. Respondents maintained that Claimants were negligent in exercising the degree of prudence required of an investor. Respondents maintained that no fiduciary relationship existed between Claimants and Respondents with respect to the transaction or in the absence of a written agreement expressly creating such a relationship. Respondents maintained that Claimants are barred from any recovery due to their contributory negligence and assumption of risk. Respondents further maintained that Claimants are barred by the Statute of Limitations on the claim.

RELIEF REQUESTED

Claimants requested rescission of their purchases of the Bonds offset by the value they received in cash and stock upon liquidation of the Bonds. Claimants requested \$144,625 in Compensatory damages. In addition, Claimants seek interest from September, 1990, as well as costs and attorneys' fees.

Respondents requested that Claimant's claim be dismissed in its entirety and that the Panel award Respondents all costs and fees associated with defending this claim.

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 remain on file with the NASD.

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 Claimants' claim against Respondents has been denied in its entirety.
2. The parties shall bear their respective costs, including attorneys' fees.

FORUM FEES

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

6 sessions X \$750 = \$4,500

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Forum fees Assessed Against: Claimants for 20% and Respondent B&S for 80%. Claimant is assessed Forum Fees in the amount of \$900, however, Claimant is entitled to offset this amount with the hearing session deposit of \$750 so the amount due from Claimant as Forum Fees is \$150. Respondent B&S is assessed forum fees in the amount of \$3600.

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

Concurring Arbitrator's Signature

Name


Roger L. Dietz

Public/Industry


Industry


NASD Date of Decision: August 3, 1994

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Concurring Arbitrator's Signature
Name



Harold A. Stein

Public/Industry



PUBLIC

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Concurring Arbitrator's Signature
Name


Lionel J. Goulet, Esq.

Public/Industry

PUBLIC

NASD Date of Decision: August 3, 1994