

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mary Pat Wilson

93-02136

Name of Respondent

Richard A. Laviola

REPRESENTATION

For Claimant Mary Pat Wilson: David Crystal, II, Esq. of the law firm of Collier, Cohen, Crystal & Bock located in New York City, New York.

For Respondent Richard Laviola: Daniel Torchio, Esq. of the law firm of Kallan & Torchio, P.C. located in New York City, New York.

CASE INFORMATION

Statement of Claim filed: May 25, 1993.

Claimant's Submission Agreement signed on: May 24, 1993.

Statement of Answer filed by Respondent on: October 7, 1993.

Amended Statement of Answer filed by Respondent on: January 20, 1994.

Respondent did not execute a Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference: January 14, 1994 - One Session

Hearing Date/Sessions: February 14, 1994 - One Session

Hearing Location: National Association of Securities Dealers, Inc. offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that she held 10 Southland call options in her personal account which were to expire on June 18, 1987; that on May 29, 1987, Claimant phoned Respondent, a colleague at Moore and Schley, and instructed Respondent to sell the Southland call options immediately "at the market"; and that Respondent took the order and said he would place the order right away. Claimant also alleged that Respondent was expressly told that the trade had to be done that day as she was leaving for her honeymoon and had already submitted an ACAT form which would be processed during the two weeks she was away.

Claimant further alleged that upon Claimant's return on June 15, 1987, Respondent advised Claimant that he sold the 10 call options not on May 29, 1987 as requested, but instead on June 3, 1987 at 3-1/2; that on June 4, 1987 at Respondent's own discretion and without Claimant's knowledge or authorization, Respondent bought back 5 of the call options at 5-1/2 because Respondent believed the options were going to go higher; and that on June 15, 1987 the call options were trading at 2, representing a loss in Claimant's account.

Further, Claimant alleged that Claimant immediately instructed that the options be sold out; that the buy and sell be canceled, and that Claimant's account be restored to its original standing. Respondent allegedly assured Claimant that he would make restitution for the \$1913.17 loss in the account. Claimant also alleged that Respondent gave Claimant a check for \$1800.00 as restitution for the losses in Claimant's account; that the check bounced; and that Respondent's wife agreed to make good on the bad check by sending a new check for \$1,900.00, the full amount of restitution.

Claimant alleged that Respondent's wife forwarded letters to the NASD as well as Claimant's employer accusing Claimant of crimes including blackmail and extortion with regard to the restitution payment, for the purpose of humiliating Claimant and irreparably injuring Claimant's reputation; that in late 1992, Respondent's wife filed a claim in Small Claims Court, White Plains, New York, asserting false allegations of extortion and fraud regarding the \$1900.00 restitution payment; that the Respondent's wife was successful at trial, resulting in a decision of \$2998.00 (\$1900.00 plus interest from July 9, 1987); and that the decision has taken away the \$1900.00 Claimant was entitled to due to Respondent's unauthorized trades.

Respondent denied all allegations of wrongdoing as alleged in the Statement of Claim. Respondent maintained that Claimant fraudulently induced Respondent into handling Claimant's account; that Claimant manipulated the Respondent in such a manner as to guarantee that Claimant would be free from any market risk while she was away; and that Claimant was able to guarantee that any loss would be recovered directly from Respondent as a result of Claimant's claim of unauthorized trading.

Respondent maintained that Claimant committed securities fraud and insider trading violations; that the loss was incurred as a result of Claimant's inability to contact her "insider source"; and that all damages incurred by Claimant are as a result of her own negligent, reckless, and/or purposeful conduct and not as a result of any wrongdoing of Respondent.

Respondent further maintained that all trades forming the basis of the claims alleged in the Statement of Claim were made with Claimant's express knowledge, authority and consent, and that all claims in the Statement of Claim have been satisfied, released, resolved and settled by prior agreement of the parties.

RELIEF REQUESTED

Claimant requested the following damages against the Respondent: (A) damages in the amount necessary to completely offset Judge Kellman's award (\$2,998.00 plus applicable interest from December 7, 1992), (B) damages totalling \$25,000.00, attributable to the Laviola's defamatory and continued harassment of Wilson and the severe emotional and mental distress she has suffered due to the Laviolas' wrongful activities, (C) all costs and fees associated with bringing this claim, and (D) an award charging Respondent Laviola with all forum fees that may be incurred in this matter.

Respondent requested an award dismissing the Statement of Claim in its entirety, with prejudice, and granting Respondent recovery from Claimant and/or attorneys fees and expenses incurred in the defense of the Statement of Claim in this proceeding.

OTHER ISSUES CONSIDERED AND 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 originals remain on file with the NASD.

This panel finds that Respondent Richard Laviola was required to sign a Submission Agreement pursuant to Sections 12 and 25 of the Code, as Laviola was associated with an NASD member firm at the time this controversy arose. This panel finds that it has jurisdiction over Respondent Laviola pursuant to Section 12 of the Code and pursuant to the Form U-4 executed by Respondent Laviola.

AWARD

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

1. Respondent be and hereby is liable to the Claimant in the sum of \$1900.00, plus interest at the rate of 9% per annum from July 9, 1987 to the date of this award; provided that Claimant dismisses, with prejudice her appeal of the judgment that was awarded against Claimant in the action SC#2856/92, City Court of White Plains, Small Claims Part.
2. Respondent is found not liable on the claim of defamatory and continued harassment of the Claimant and the claim of severe emotional and mental distress of the Claimant and, therefore, these claims are hereby dismissed, with prejudice.
3. Respondent be and hereby is liable and shall pay to the Claimant the amount of \$11,000.00 for attorneys' fees, which was requested by Claimant, and the amount unopposed by Respondent at the hearing. The Panel bases its authority to award attorneys' fees on the Federal Arbitration Act and the case law interpreting that Act.

FORUM FEES

1. Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain \$100.00 non-refundable filing fee, \$400.00 hearing session deposit, and \$300.00 pre-hearing conference fee previously paid by Claimant.
2. Respondent be and hereby is liable and shall reimburse Claimant the sum of \$800.00 previously paid to the NASD by the Claimant representing Claimant's filing fee and hearing session deposits.

Concurring Arbitrators' Signatures
Name

Bernard S. Carrey, Esq.
Public Arbitrator


Robert Weintraub, Esq.
Public Arbitrator

Efren Cleofe
Industry Arbitrator

Date of Decision: June 7, 1994

STATE OF NEW YORK

COUNTY OF NEW YORK

On this 25 day of MAY, 1994, before me personally appeared ROBERT B. WEINTRAUB known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Dina Panino

NOTARY No. 41-4969329

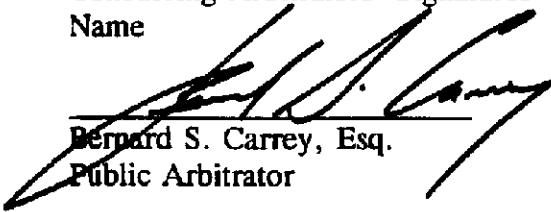
COMMISSION EXPIRES 7/16/94

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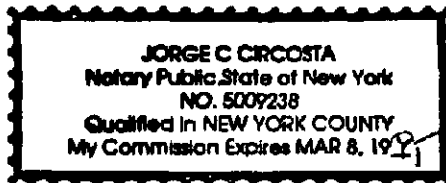
Efren Cleofe
Industry Arbitrator

Date of Decision: June 7, 1994

STATE OF New York
COUNTY OF New York

On this 25 day of MAY, 1994, before me personally appeared
BERNARD S. CARREY known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

M. Weinstein



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Bernard S. Carrey, Esq.
Public Arbitrator

Robert Weintraub, Esq.
Public Arbitrator



Efren Cleofe
Industry Arbitrator

Date of Decision: June 7, 1994

STATE OF NY

COUNTY OF Westchester

S.S.:

On this 16 day of June, 1994, before me personally appeared Efren Cleofe, III known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he/she executed the same

Caryl Berkowitz

CAROL BERKOWITZ
NOTARY PUBLIC, State of New York
No. 4975859
Qualified in Westchester County 94
Commission Expires December 28, 1994