

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Betty Feldstein

Case No.93-02171

Name of Respondents

Litwin Securities, Inc.  
Harold Litwin

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REPRESENTATION

For Claimant, Betty Feldstein, ("Feldstein"): Mark Raymond, Esq. of Tew & Garcia-Pedrosa, Miami, Florida.

For Respondents, Litwin Securities, Inc. ("LSI") and Harold Litwin ("Litwin"): Scott M. Bernstein, Esq., Miami, Florida.

CASE INFORMATION

Statement of Claim filed: June 1, 1993. Claimant's Submission Agreement signed: May 25, 1993.

Respondents', Joint Statement of Answer filed: September 9, 1993. Respondents LSI and Litwin did not sign Submission Agreements as required by Sections 12 and 25 of the Code.

HEARING INFORMATION

On July 6, 1994, in Fort Lauderdale, Florida, a hearing lasting 2 sessions was conducted.

CASE SUMMARY

Claimant brought this action to enforce the settlement of a prior NASD arbitration, case #91-02303. Claimants alleged that on August 18, 1992, two days prior to the scheduled hearing in case #91-02303, Respondents and Claimant

entered into a settlement of that action; that subsequently, Respondents' attorney, Mr. Shannon, confirmed the settlement; that on September, 1, 1992, Claimant provided a Settlement Agreement to counsel for all Respondents; that the parties, including Litwin and LSI, agreed to all of the terms of the Settlement Agreement on or before November 3, 1992; that Mr. Shannon withdrew as counsel for Litwin and LSI on or about November 3, 1992; and that, subsequently, Respondents breached and disavowed the Settlement Agreement.

Respondents denied all allegations of wrongdoing and alleged that they did not agree to or sign any contract of settlement; that the August 18, 1992, letter was not full and complete in all essential terms and, at best, the letter was an "offer" that was never "accepted"; that, instead, Claimant made a "counter-offer"; that Litwin never authorized his former lawyer to offer the terms contained in the August 18, 1992, letter; that the letter was not a settlement agreement because it was not final, and that further action needed to be taken, such as preparing, negotiating, and executing a formal agreement and, therefore, no settlement was reached.

#### **RELIEF REQUESTED**

Claimant requested \$21,000.00 in unpaid settlement funds, plus interest in the amount of \$3,814.73 pursuant to Florida Statutes; refund of NASD filing fee of \$100.00 and hearing session deposit in the amount of \$800.00; and, attorney's fees in the amount of \$7,444.42.

Respondents requested dismissal and to be credited with their previous payments to Claimant's counsel's (escrow account) in the amount of \$3,000.00.

#### **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 originals remain on file with the NASD.

#### **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. There was a settlement agreement between the parties.
2. Respondents, LSI and Litwin, are found liable, jointly and severally, and

shall pay to the Claimant the following: \$21,000.00, the amount of the August 18, 1992, settlement and prejudgment interest in the amount of \$3,814.73.

3. **FUNDS IN ESCROW:** The \$3,000.00 given to Tew & Garcia-Pedrosa by Respondents, shall be released to the Claimant immediately in order to offset the award.

4. Claimant's request for attorney's fees is denied.

#### OTHER COSTS

Except as set forth below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (2 sessions X \$400.00).

1. Respondents, LSI and Litwin, jointly and severally, are hereby assessed \$800.00, \$400.00 of which shall be paid directly to the Claimant, and \$400.00 of which shall be paid to the National Association of Securities Dealers, Inc.

2. Respondents, LSI and Litwin, jointly and severally, shall reimburse the Claimant for the non-refundable filing fee of \$100.00.

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

Concurring Arbitrators' Signatures

151  
Edward J. Marko, Esq.

Public/Chairman

151  
Andrew Bartfay

Industry

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Randy L. Rubin, Esq.

Public

Date of Decision:

8/9/94