

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant/Counter-Respondent

Jack J. Sendoykas

93-02644

Name of Respondent/Counter-Claimant

Robert P. Seeber

REPRESENTATION

For Claimant/Counter-Respondent: Jack J. Sendoykas ("Sendoykas") was represented by Jeffrey M. Bauer, Esq., of Grosse Pointe, Michigan.

For Respondent/Counter-Claimant: Robert P. Seeber ("Seeber") was represented by Laurence S. Schultz, Esq., of Driggers, Schultz, Herbst & Paterson, located in Troy, Michigan.

CASE INFORMATION

Statement of Claim filed: July 7, 1993.

Sendoykas' Submission Agreement signed on: June 30, 1993.

Statement of Answer and Counterclaim filed by Seeber on: October 28, 1993.

Seeber's Submission Agreement signed on: November 3, 1993.

Sendoykas' Answer to Counterclaim filed: December 14, 1993.

Seeber's Motion to Dismiss filed: October 28, 1993.

Sendoykas' Response to Motion to Dismiss filed: December 14, 1993.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: September 27, 1995 for Three (3) sessions; and
September 28, 1995 for Two (2) sessions.

Hearing Location: Southfield, Michigan.

CASE SUMMARY

Sendoykas alleged that Seeber misrepresented and omitted the risks associated with limited partnerships, inducing him to purchase securities which were unsuitable given Sendoykas' investment objectives. The claim specifically alleged that:

1. In 1986, Seeber recommended and sold to Sendoykas units in Southmark Realty Partners II and III. From 1986 to 1990, Seeber never explained the risks associated with limited partnerships;
2. During September 1986, Seeber became aware that the Southmark limited partnerships were ill-conceived and doomed to failure, but continued to sell units to Sendoykas without providing this material information;
3. Through 1989 and 1990, Seeber induced Sendoykas to file complaints with the NYSE and the NASD, and an arbitration with the NASD naming numerous respondents, but not naming himself as one. Seeber prepared the arbitration claim himself. After Sendoykas was served with a counterclaim and Seeber a Third-Party Claim, Seeber induced Sendoykas to withdraw his claim.

Based upon the above allegations, Sendoykas asserted claims for fraud; negligence; breach of fiduciary duties; breach of contract; and violation of federal and state securities laws.

Seeber denied the material allegations of the Statement of Claim, alleging that:

1. Sendoykas was a knowledgeable and sophisticated investor who often conducted unsolicited transactions. Sendoykas made his own investment decisions and believed many of Seeber's ideas were too conservative. His investment objectives were growth, speculation and short term trading;
2. In June 1986, Seeber recommended other investments prior to Sendoykas' purchase of Southmark, but Sendoykas rejected Seeber's recommendations as

too conservative and without any opportunity for growth. Sendoykas instead purchased the first of his Southmark investments, signing a subscription agreement which acknowledged his suitability for the investment and receipt of the prospectus. The prospectus disclosed the risks of the investment;

3. The Southmark investments were suitable for Sendoykas in view of his financial situation and needs, net worth and prior investment experience; and

4. Seeber was unaware of any problems with the investments until after the sales were made to Sendoykas. Seeber attempted to assist Sendoykas in resolving his disputes with Thomson McKinnon, but did not provide Sendoykas with any legal advice. Sendoykas chose not to consult with an attorney when he filed his original claim.

In addition, Seeber asserted several affirmative defenses, including the following:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. Sendoykas was aware of, and voluntarily assumed, the risk of his investments;
3. The diminution of value, if any, is the result of unforeseen economic and other conditions in the real estate market and the economy in general; and
4. The claims are barred by the statute of limitations, laches and for failure to mitigate damages.

Seeber asserted a Counterclaim, alleging that the fraudulent statements made by Sendoykas on the limited partnership subscription agreements and the baseless allegations asserted in the Claim directly caused damage to him in the form of legal fees, costs and expenses for defense of the claim.

Sendoykas denied the material allegations of the Counterclaim.

RELIEF REQUESTED

Sendoykas requested entry of an award against Seeber for damages in the sum of \$98,000.00; interest; costs; and attorneys' fees. In addition, Sendoykas requested rescission and restitution, as well as any other appropriate relief the panel deemed just and equitable. In his answer to the Counterclaim, Sendoykas requested that the Counterclaim be dismissed and that he receive damages in excess of \$110,000.00.

Respondent requested that the claims against him be dismissed and that he receive an award against Sendoykas on the counterclaim equal to attorneys' fees, costs and expenses for defense of the claim.

OTHER ISSUES CONSIDERED & DECIDED

Seeber filed a Motion to Dismiss pursuant to Section 15 of the NASD Code of Arbitration Procedure. Sendoykas filed a Response. After review, the Director of Arbitration denied the motion in part and granted it in part in a letter dated April 8, 1994.

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. The Statement of Claim filed by Claimant/Counter-Respondent Jack J. Sendoykas is dismissed with prejudice and denied in its entirety;
2. The Counterclaim filed by Respondent/Counter-Claimant Robert P. Seeber is dismissed with prejudice and denied in its entirety;
3. The parties shall bear their owns costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Five (5) hearing sessions x \$500.00 per session = \$2,500.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and the \$500.00 hearing session deposit previously deposited by the Claimant/Counter-Respondent Jack J. Sendoykas. In addition, Claimant/Counter-Respondent Jack P. Sendoykas is liable for and

shall pay to the NASD the sum of \$750.00 as additional forum fees. Furthermore, Respondent/Counter-Claimant Robert P. Seeber is liable for and shall pay to the NASD the sum of \$1,250.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Robert Shiffra, Esq.

December 27, 1995

Robert Shiffra, Esq.

Industry Arbitrator

Chairperson

/s/ Isadore Bernstein

December 27, 1995

Isadore Bernstein

Public Arbitrator

/s/ Jerome D. Sobczak

December 27, 1995

Jerome D. Sobczak

Public Arbitrator

For NASD Use Only

Date of Decision: December 27, 1995