

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Elizabeth J.C. Mullis

Name of Respondents

Dominick & Dominick Incorporated;
Schneider Securities, Inc.;
Correspondent Services Corp.;
Howard D. Frank;
Evan Frank;
Del Mar Securities, Inc.;
Kevin S. Allen;
Mike Niebuhr;
Joe Christian;
American Aegis Securities;
AmeriTrade, Inc.; and
RAF Financial Corporation.

93-02819

Name of Third-Party Respondent

David B. Mullis

REPRESENTATION

For Claimant and Third-Party Respondent: Elizabeth J. C. Mullis and David B. Mullis were represented by William S. Shepherd, Esq. of Houston, Texas.

For Respondents: Dominick & Dominick Incorporated was represented by Suzanne M. Saur, Esq. of Saur and Saur, located in Houston, Texas.

Schneider Securities Inc. and Howard D. Frank were represented by Stephen C. Larson, Esq. and Gary J. Ceriani, Esq., of Davis & Ceriani, located in Denver, Colorado.

Correspondent Services Corp. was represented by Andrew Harvin, Esq. of Doyle, Reed, Restrepo, Harvin & Robbins, located in Houston, Texas.

Joe Christian, American Aegis Securities, Kevin S. Allen, Evan Frank, and Del Mar Securities Inc. did not appear.

AmeriTrade, Inc. was represented by Jeffrey Scott, Esq. of Krys Boyle Golz Reich Freedman Bean & Scott, P.C., located in Denver, Colorado.

RAF Financial Corporation was represented by Russell C. Burk, Esq. of RAF Financial Corporation, Denver, Colorado.

CASE INFORMATION

Statement of Claim filed: July 20, 1993.

Claimant's Submission Agreement signed on: July 8, 1993.

First Amended Statement of Claim filed on: November 12, 1993.

Second Amended Statement of Claim filed: July 25, 1994.

Third Amended Statement of Claim filed on: August 12, 1994.

Third-Party Respondent David B. Mullis' Submission Agreement signed on: June 21, 1994
Response to the Third-Party Claim of Schneider Securities, Inc. filed by Mr. Mullis on: May 4, 1994.

Respondent Correspondent Services Corp.'s Submission Agreement signed on: October 26, 1993
by Steve Cucchia, Director of Compliance, Correspondent Services Corp.

Respondent Correspondent Services Corporation's Answer and Motion to Dismiss filed: October 14, 1993.

Memorandum of Law in Support of Correspondent Services Corporation's Motion to Dismiss filed: October 22, 1993.

Amended Motion of Correspondent Services Corp. to Dismiss filed: May 31, 1994.

Claimant's Response to Answer, Motion for More Definite Statement and Motion to Dismiss of Respondent Correspondent Services Corporation filed on: December 14, 1993.

Statement of Answer filed by Respondent Dominick & Dominick on: August 20, 1993.

Amended Statement of Answer filed by Dominick & Dominick, Incorporated on: November 22, 1993.

Second Amended Statement of Answer filed by Dominick & Dominick, Incorporated on: August 18, 1994.

Request for Dismissal and Memorandum of Law in Support of Dismissal filed by Dominick & Dominick, Inc. on: November 22, 1993.

Motion for More Definite Statement and/or Motion for Special Exceptions filed by Dominick & Dominick on: November 22, 1993.

Respondent Dominick & Dominick, Incorporated's Submission Agreement signed: August 2,

1993 by Robert C. Harrtison, Secretary, Dominick & Dominick, Incorporated.

Claimant's Response to the Answer, Motion for More Definite Statement and Motion to Dismiss of Respondent Dominick & Dominick, Inc. filed: December 15, 1993.

Amended Request for Dismissal and Memorandum of Law in Support of Dismissal of Claims against Dominick & Dominick Incorporated filed: August 18, 1995

Respondent Schneider Securities, Inc.'s Motion for More Definite Statement filed: August 23, 1993 and October 20, 1993.

Claimant's Response to the Request for a Mote Definite Statement by Respondent Schneider Securities filed: December 17, 1993.

Respondents Schneider Securities, Inc.'s and Howard D. Frank's Statement of Answer, Statement of Counterclaim and Third-Party Claim against David B. Mullis filed on: February 11, 1994.

Respondent Schneider Securities, Inc.'s Submission Agreement signed on: February 8, 1994 by Thomas W. Schneider, Chief Executive Officer, Schneider Securities, Inc.

Respondent Howard D. Frank's Submission Agreement signed on: February 10, 1994.

Schneider Securities' and Frank's Motion to Deny Leave to File Second Amended Statement of Claim filed: August 23, 1994.

Objection to Claimant's Motion to Amend Pleadings filed: September 1, 1994.

Statement of Answer filed by Respondent AmeriTrade, Inc. on: April 1, 1994.

Respondent AmeriTrade's Submission Agreement signed on: March 24, 1994 by Kurt D. Halvorson, Vice President and Controller, AmeriTrade, Inc.

AmeriTrade's Motion to Sever Claims and AmeriTrade's Motion to Dismiss filed April 11, 1994.

Claimant's Response to AmeriTrade's Motion to Dismiss and Response to Motion to Sever filed May 4, 1994.

Statement of Answer filed by Respondent RAF Financial Corporation on: March 17, 1994.

Respondent RAF Financial Corporation's Submission Agreement signed on: March 17, 1994 by Russell Burk, Legal Counsel, RAF Financial Corporation.

Respondents Schneider Securities, Inc.'s and Howard D. Frank's Motion to Dismiss DTPA Claims filed on: May 9, 1994.

Claimant's Response to Motion of Schneider Securities, Inc. and Howard D. Frank to Dismiss DTPA Claims filed May 10, 1994.

Reply to Claimant's Response to Motion to Dismiss DTPA Claims filed by Schneider Securities Inc. and Howard D. Frank on: May 27, 1994.

Claimant's Response to Motion to Dismiss of Schneider Securities, Inc. and Howard D. Frank and Claimant's Response to the Motion to Dismiss of RAF Financial Corporation filed on: September 2, 1994.

Claimant's Motion to Amend Pleadings and Motion to Disregard Pleadings filed: September 6, 1994.

Respondent Dominick & Dominick's Response to Motion to Disregard filed: September 8, 1994.

Motion to Dismiss of Respondent RAF Financial Corporation filed: October 3, 1994

Motion to Dismiss of Respondent Schneider Securities filed October 4, 1994.

Claimant's Response to the Motions to Dismiss of Respondents Schneider Securities, Frank and RAF Financial filed: October 15, 1994.

Schneider Securities' Reply to Claimant's Response to the Motion to Dismiss filed: October 31, 1994.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: September 21, 1994 for Two (2) sessions; and
September 22, 1994 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant alleged that Respondents acted in concert to induce Claimant to purchase unsuitable securities through misrepresentation of the risks and made unauthorized transactions in the account. The Respondents had no contact with Mrs. Mullis, but conducted all trades through Mr. Mullis.

Respondent Correspondent Services Corporation denied the material allegations of the Statement of Claim, alleging that as a correspondent services firm for Respondent Schneider Securities, Correspondent performed a number of purely administrative tasks. Correspondent had no connection with Mullis and was not responsible for the supervision of the account.

Respondent Dominick & Dominick denied the material allegations of the Claim, asserting that as a clearing broker who performed back room functions, it was not liable for the damages to the Claimant and is not responsible for any wrongs done the Claimant Mullis. In addition, Dominick & Dominick asserted several affirmative defenses.

Respondents Schneider Securities and Frank denied the material allegations of the Statement of Claim, alleging that Claimant expressly granted David B. Mullis the authority to enter orders on her account, buy and sell on margin, sell short, transfer money and property from her account, and engage in options transactions. The Respondents asserted a counterclaim alleging that Mrs.

Mullis owed a duty of reasonable care to review her statements and notify these Respondents of any improper transactions engaged in by her husband or any change in his authority. In addition, Respondents asserted a Third-Party claim against Mr. Mullis, alleging that because Mrs. Mullis had authorized Mr. Mullis to engage in all transactions, any losses suffered were the result of the conduct of Mr. Mullis and he would be responsible for indemnifying these Respondents for any damages to Mrs. Mullis they were required to pay.

Respondent AmeriTrade denied the material allegations of the Statement of Claim, asserting that as a clearing broker, it was not responsible for any of the damages asserted by Claimant. In addition, AmeriTrade asserted several affirmative defenses.

Respondent RAF denied the material allegations of the Statement of Claim, asserting that Mullis made numerous unsolicited transactions in her account and that the account diminished only slightly in value while at RAF. In addition, RAF asserted several affirmative defenses.

Third-Party Respondent David B. Mullis asserted that initially, all investments he made in Mrs. Mullis' account were conservative, but that several unauthorized transactions resulted in short and naked positions which caused substantial losses. Mr. Mullis was then enticed to take increasingly greater risks in order to attempt the recovery of the lost funds.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents, jointly and severally, for total damages of at least \$500,000.00, as follows:

1. Actual damages to be determined;
2. Double or treble damages according to the Texas Deceptive Trade Practices-Consumer Protection Act (DTPA), Tex. Bus. & Com. C. Sec. 17.50(b)(1);
3. Treble damages pursuant to the Federal Civil RICO claims, 18 U.S.C. 1962;
4. Costs and reasonable attorneys' fees pursuant to the DTPA and RICO;
5. Punitive damages in an amount that the arbitrators find appropriate;
6. Pre-award and post-award interest at the maximum legal rate on all sums awarded except costs including reasonable attorneys' fees; and
7. Any and all relief that the arbitrators deem appropriate.

Respondent Correspondent Services Corporation requested that Claimant's demand for relief be

dismissed in its entirety with costs, including Correspondent's fees and costs, being charged to the Claimant.

Respondent Dominick & Dominick requested that the Claim be dismissed in its entirety and the Claimant take nothing on her claim; that it be awarded reasonable costs and attorneys' fees; and for any other relief, legal or equitable, which it showed itself entitled.

Respondents Schneider Securities and Frank requested that the Panel award them indemnification for any liabilities the Respondents are determined to have to Mrs. Mullis; for compensatory damages, including multiple damages under the Texas Deceptive Trade Practices Act; for punitive damages; and for costs and reasonable attorneys' fees.

Respondent AmeriTrade requested that the claims be dismissed and that it be awarded its costs and attorneys' fees.

Respondent RAF requested that Mullis' claims be denied.

Third-Party Respondent David B. Mullis requested that the claims against him be denied.

OTHER ISSUES CONSIDERED & DECIDED

The NASD and Claimant were unable to locate Respondents Evan Frank; Del Mar Securities, Inc.; Kevin S. Allen; Joe Christian and American Aegis Securities in order to properly serve the Statement of Claim and Notice of the Hearing. Based upon review of the file and presentation of Counsel, the claims against Respondents Evan Frank; Del Mar Securities, Inc.; Kevin S. Allen; Joe Christian; and American Aegis Securities are hereby dismissed without prejudice.

By letter dated July 5, 1994, Claimant dismissed with prejudice all claims made by her against Respondent Niebuhr.

By letter dated September 2, 1994, Claimant advised by letter that all claims against Respondent Correspondent Services Corp. had been settled and that the claims be dismissed. Therefore, based upon this correspondence, the claims against Respondent Correspondent Services Corp. are hereby dismissed with prejudice.

On June 13, 1994, the Panel made the following determinations of Motions and responses presented to them for review:

1. The Request for Dismissal of Respondent Dominick and Dominick dated November 22, 1993 was denied;
2. The Motion to Sever the claim against Respondent AmeriTrade dated April 7,

1994 was denied;

3. The Motion to Dismiss of AmeriTrade, Inc. dated April 11, 1994 was denied;

4. The Motion to Dismiss of Respondent Correspondent Services Corporation dated October 14, 1994 was denied; and

5. Respondents Schneider Securities and Franks' Motion to Dismiss DTPA claims dated May 9, 1994 was denied.

On September 16, 1995, the Panel granted Claimant's Motion for Leave to file her Third Amended Statement of Claim. In addition, the Panel denied Claim's Motion to Disregard pleadings directed at Dominick & Dominick.

Upon reconsideration of the Motions to Dismiss filed by Respondents Dominick & Dominick, Inc. and AmeriTrade, Inc., and the responses thereto, the Panel determined on September 19, 1994 that the Motions would be granted, and these Respondents were dismissed. The Panel retained jurisdiction over Dominick and Dominick's and AmeriTrade's claims for attorneys' fees, interest and costs. The Claimant requested reconsideration of the dismissal at hearing. The panel denied the request.

During the hearing recess, the remaining respondents filed separate Motions to Dismiss. After review of the Motions, Responses and considering the evidence presented, the Panel determined that the separate Motions to Dismiss with Prejudice filed by Respondents Schneider Securities, Inc., Howard D. Frank and RAF Financial Corporation would be granted, but that RAF Financial Corporation's claim for fees and costs was denied.

AWARD

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

1. The claims against Respondents Schneider Securities Inc.; Howard D. Frank; RAF Financial Corporation; Michael A. Niebuhr; Correspondent Services Corporation; Dominick & Dominick Incorporated; and AmeriTrade, Inc. which were asserted by Claimant Elizabeth J.C. Mullis are dismissed with prejudice;

2. The claims against Respondents Evan Frank; Del Mar Securities, Inc.; Kevin S. Allen; Joe Christian; and American Aegis Securities which were asserted by Claimant Elizabeth J.C. Mullis are dismissed without prejudice;

3. The counterclaim asserted against Claimant Elizabeth J.C. Mullis is dismissed with prejudice;
4. The Third-Party claim asserted against Third-Party Respondent David B. Mullis is dismissed with prejudice;
5. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
6. 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: Four (4) hearing sessions x \$750.00 per session = \$3,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$200.00 previously deposited toward the \$750.00 hearing session deposit by the Claimant, Elizabeth J.C. Mullis. The NASD shall retain the \$500.00 claim filing fee and refund the \$750.00 hearing session deposit previously deposited by the Respondents, Schneider Securities, Inc. and Howard D. Frank. Claimant Elizabeth J.C. Mullis is liable for and shall pay to the NASD the sum of \$2,800.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/s/ Brantly Harris, Esq.

July 12, 1995

Brantly Harris, Esq.

Public Arbitrator

Chairperson

/s/ Michael E. McGown, Esq.

July 15, 1995

Michael E. McGown, Esq.

Public Arbitrator

/s/ Thomas A. Thornhill

July 18, 1995

Thomas A. Thornhill, Jr.

Industry Arbitrator

For NASD Use Only

Date of Decision: July 24, 1995