

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Melanie H. Spiegel & Photocom Inc.

and

93-02873

Name of Respondents

Harris Securities, Inc. Donald Harris and Ronald Ardt

Name of Third Party Respondent

Seymour Bloom

REPRESENTATION OF PARTIES

Melanie H. Spiegel & Photocom Inc. ("**Claimants**") were represented by John D. Fraser, Esq. of Shields, Britton & Fraser, Dallas, Texas.

Harris Securities, Inc. and Donald Harris ("**Respondents**") were represented by Anthony A. Petrocchi, Esq. of Weil & Petrocchi, Dallas, Texas.

Ronald Ardt ("**Ardt**") appeared *pro se*.

Seymour Bloom ("**Bloom**") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about July 22, 1993. Claimant's Response to Respondents' Counterclaim and Third Party Complaint was dated November 23, 1993. Submission Agreement of Claimant was signed on July 19, 1993.

Respondents' Motion to Decline Jurisdiction and Original Answer, Counterclaim and Third Party Complaint was filed by Respondents Harris Securities, Inc. Donald Harris and Ronald Ardt on or about October 5, 1993.

HEARING INFORMATION

The hearing was held on Wednesday, June 22, 1994 for two (2) sessions and Thursday, June 23, 1994 for three (3) sessions in Dallas, Texas for a total of five (5) sessions.

CASE SUMMARY

Claimant alleged that Respondents were negligent, breached her verbal instructions and violated her trading investment objectives. Claimant specifically alleged that Respondents unnecessarily churned her account; invested in unsuitable investments; made unauthorized trades; and failed to supervise the account representative.

In her Response to Respondents' Counterclaim and Third Party Claim, the Claimant denied certain allegations against her and agreed that Third Party Respondent Bloom may have liability to her for the losses in the account and consented to the Third Party Claim and stated that she would be filing a cross action against Bloom.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that the Claimant had provided Harris Securities, Inc. with a Full Trading Authorization authorizing it to rely upon the instructions of Seymour Bloom and that the investments in the account were consistent with her stated investment objectives. Respondents further stated that the Claimant declined the offer of Respondent Ardt to call her on each trade. Respondents also asserted a Counterclaim against the Claimant seeking recovery of the debit balance in her account.

In the Third Party Claim, Respondents seek indemnification from Seymour Bloom. Respondents allege that Seymour Bloom is the party responsible for any liability, if any, to the Claimant.

In his response to the Third Party Claim, Seymour Bloom, admits that he is partially responsible for the losses to the Claimant, but that Respondents are also responsible for failing to supervise and reckless disregard for the Claimant's well being. Mr. Bloom also stated that at the time in question he had serious emotional problems, including alcohol abuse.

RELIEF REQUESTED

Claimant requested an award of actual damages in the amount of \$64,797.65; exemplary damages in the amount of three (3) times the actual damages sought; reasonable attorneys' fees; pre-award interest and post-award interest at the highest lawful rate per annum; and such other and further relief to which Claimant may show herself to be justly entitled.

Respondents Harris Securities, Inc. Donald Harris and Ronald Ardt requested that Claimant take nothing by her suit, that they have recovery of their actual and exemplary damages from Claimant and Third Party Respondent Bloom, jointly and severally, pre and post award interest

thereon at the highest lawful rate, reasonable attorneys' fees, costs of this proceeding expended and for such other and further relief in law and in equity to which they may be entitled.

Third Party Respondent Bloom made no request for relief.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Harris Securities, Inc. Donald Harris and Ronald Ardt did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

Third Party Respondent Seymour Bloom did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Respondent Harris Securities Inc. asserted a Motion for Default against Respondent Third Party Respondent Seymour Bloom. After hearing the arguments presented on behalf of or by the parties, the undersigned arbitrators **denied** the motion.

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(s) 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. Respondents Harris Securities, Inc. and Ronald Ardt shall be and hereby are liable for and shall pay to the Claimant Melanie Spiegel the sum of **Twenty thousand dollars (\$20,000)**.
2. Respondent Seymour Bloom shall be and hereby is liable for and shall pay to the Claimant Melanie Spiegel the sum of **Fifty four thousand dollars (\$54,000)**.
3. Respondent Seymour Bloom shall be and hereby is liable for and shall pay to the Claimant Melanie Spiegel the sum of **Twenty thousand seventy dollars (\$20,070)** as

attorneys' fees and costs. The undersigned arbitrators find that they have the authority to make an award of attorneys' fees.

4. All claims asserted against Donald Harris are hereby dismissed and denied in their entirety.
5. Third Party Respondent Seymour Bloom shall be and hereby is liable for and shall pay to Third Party Claimant Harris Securities, Inc. the sum of **Twenty three thousand six hundred seventy one dollars and eighty three cents (\$23,671.83)**.
6. Third Party Respondent Seymour Bloom shall be and hereby is liable for and shall pay to Third Party Claimant Harris Securities, Inc. the sum of **Twelve thousand three hundred dollars (\$12,300)** as attorney's fees and costs. The undersigned arbitrators find that they have the authority to make an award of attorneys' fees.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were 5 sessions x \$750 = \$3,750 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant. Third Party Respondent Seymour Bloom shall be and hereby is liable for and shall pay to the NASD the sum of \$3,000 as forum fees.

The NASD shall refund postponement fees in the amount of \$750 previously deposited with the NASD by Respondent Harris Securities, Inc. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

s/ Jonathan A. Pace, Esq.

August 2, 1994

Jonathan A. Pace, Esq.

Public Arbitrator, Presiding Chair

s/ William B. Madden

August 2, 1994

William B. Madden

Public Arbitrator

s/ Hubert H. Chase

August 2, 1994

Hubert H. Chase

Industry Arbitrator

8/11/94