

N.A.S.D. AWARD

9503069

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Sharon Occhiuto

93-03998

Name of Respondents

Investacorp, Inc.
David Lee

REPRESENTATION

For Claimant, Sharon Occhiuto ("Occhiuto"): Ralph Occhiuto, Heathrow, Florida.

For Respondent, Investacorp ("Investacorp"): Charles D. Miner, Esq., Orlando, Florida.

For Respondent, David Lee ("Lee"): See "Other Issues"

CASE INFORMATION

Statement of Claim filed: September 13, 1993. Claimant's Submission Agreement signed on: February 21, 1995.

Statement of Answer filed by Respondent, Investacorp on: February 10, 1994.

Respondent, Investacorp's Submission Agreement signed on: February 10, 1994 by Randy Nestel, Senior Vice President of Investacorp, Inc. on behalf of Investacorp.

No Statement of Answer filed by Respondent, Lee: See "Other Issues". No Submission Agreement signed by Respondent, Lee: See "Other Issues".

HEARING INFORMATION

On February 21, and February 22, 1995, in Tampa, Florida hearings lasting 4 sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent, Lee, disregarded her instructions by purchasing shares of stock in U.S. Air Group, Inc. and then refusing to sell those shares upon her request. The Claimant also alleged that there were numerous other trades in Claimant's account that were undertaken by Lee without Claimant's knowledge or consent, and that these investments were unsuitable for her. Claimant specifically alleged against the Respondents the following: Unsuitability; Overleveraging of Claimant's Margin Account; Broker Ignorance; Unauthorized

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Trading of Claimant's account; Unauthorized trades; and, Breach of Fiduciary duty.

Respondent, Investacorp denied all allegations of wrongdoing and maintained that Claimant authorized all the trades in her account; that the trades were suitable for the Claimant; that Claimant was interested in high-risk investments; that Claimant's portfolio consisted entirely of "penny" stocks when she opened her account; that Claimant received confirmation slips for each trade; that Claimant received monthly statements about her account; that Claimant never complained to Lee's supervisor or to Investacorp concerning the Claimant's allegation that Lee was conducting unauthorized trades or refusing to follow Claimant's instructions; that Claimant continued to trade with Investacorp after losses were incurred in U.S. Air Group, Inc.; and, that Claimant is barred from bringing an action under the applicable statute of limitation.

RELIEF REQUESTED

Claimant requested compensatory damages, including commissions of \$20,941.25, plus prejudgment interest; punitive damages, in the amount of three times the sum of compensatory damages, of \$62, 823.75; costs and expenses of these proceedings; attorney's fees; and, any other such relief this Panel deems just and appropriate.

Respondent, Investacorp, requested that Claimant be denied any relief in this case. Respondent also requested that all costs and expenses incurred in this case be assessed against Claimant. Respondent further requested that Claimant reimburse Respondent \$3,000.00 in legal fees and \$250.00 in hotel and travel expenses.

OTHER ISSUES CONSIDERED & DECIDED

1. Prior to the hearing, the NASD was informed by Claimant's representative that David Lee had earlier filed bankruptcy. Based upon David Lee's bankruptcy Claimant withdrew her claim against him and he was removed as a party to this case by the NASD.
2. 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. Respondent, Investacorp, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimant's requests for punitive damages, treble damages, attorneys' fees and costs are hereby denied.

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3. Respondent, Investacorp's requests for legal fees and hotel and travel expenses are hereby denied.

OTHER COSTS

The parties shall each bear their own costs incurred in connection with this proceeding including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel assessed forum fees in the amount of \$2,000.00 (four (4) hearing sessions X \$500.00).

1. Claimant is hereby assessed Forum Fees in the amount of \$1,000.00 for which the NASD shall retain the \$500.00 previously deposited by Claimant in partial satisfaction thereof leaving a balance due to the NASD by Claimant of \$500.00.
2. Respondent, Investacorp, is hereby assessed Forum Fees in the amount of \$1,000.00 payable directly to the NASD, Inc.
3. The NASD shall retain the non-refundable filing fee of \$150.00 paid by Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Robert M. Shavick, Esq.

Public/Chairman

/s/

Beverly S. Gordon, Esq.

Industry/Panelist

/s/

Alexander J. Fedor

Public/Panelist

Date of Decision: **March 23, 1995**