

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Alexey Zacharin

v.

Case #
93-04101

Name of Respondents

Kenneth Edward Nightingale
Lew Lieberbaum & Co., Inc.

REPRESENTATION

For Claimant: Adolph Seltzer, Esquire located in New York, New York.

For Respondent, Lew Lieberbaum ("LLC"): Jay Marc Israel, Esq. in-house counsel, located in Garden City, New York.

Respondent, Kenneth Edward Nightingale ("Nightingale") did not appear at the hearing.

CASE INFORMATION

Statement of Claim filed: October 4, 1993.

Claimant's Submission Agreement signed on: September 30, 1993.

Respondent, LLC's, Submission Agreement signed on: December 3, 1994.

Statement of Answer filed by Respondent, LLC on: December 3, 1993.

Respondent, LLC, filed a Cross Claim against Nightingale on: December 3, 1993.

Respondent, Nightingale did not execute a Submission Agreement.

Respondent, Nightingale, did not file a Statement of Answer.

HEARING INFORMATION

Hearing Date/Session: July 6, 1994/ 1 session

Hearing Location: National Association of Securities Dealers, Inc., 33 Whitehall Street, New York, NY 10004.

CASE SUMMARY

Claimant alleged that Respondent Nightingale "induced" Claimant to sell 500 shares of Future Medical Products, Inc. ("Future") at \$4.45 per share in order to minimize his loss and make another investment. However, Claimant alleged, Respondent Nightingale actually sold the 500 shares of Future at \$2.61 per share, causing a loss to Claimant of \$9,212.00. Claimant alleged Respondents agreed to make up the loss to Claimant but did not uphold their agreement.

Respondent, LLC, maintained that he did make up the loss by generating trade profits in the account using Claimant's funds. LLC stated that the only real loss remaining was \$600 and they were willing to pay Claimant that amount.

Respondent LLC crossclaimed against Nightingale for indemnification and, LLC alleged that Nightingale, without authorization from LLC, informed the Claimant that LLC would reimburse him for the \$9,212.00.

RELIEF REQUESTED

Claimant requested an award of \$9,212.00 plus interest at 9% from April 8, 1992 through the decision date, as well as arbitration filing fees.

Respondent requested the \$800.00 filing fee from Nightingale for the Cross Claim and other fees as the arbitrator saw fit to grant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

Respondent, Nightingale, did not appear at the hearing. The undersigned Arbitrator determined that pursuant to Section 25 of the *Code of Arbitration Procedure* ("*Code*"), proper service and notification was made by the NASD and Respondent, LLC, upon Nightingale. This Arbitrator then proceeded with the hearing in Nightingale's absence pursuant to Section 29 of the *Code*.

Respondent, LLC, moved for a default judgment against Nightingale in the amount, if any, of an award rendered against LLC. Claimant also moved for judgment against Nightingale in the amount of \$9,212.00 and interest as well as arbitration filing fees. The Arbitrator denied both motions.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Lew Lieberbaum & Co., Inc. and Kenneth A. Nightingale, jointly and severally, shall pay the sum of \$10,000 in settlement of all claims and other charges including interest, to Alexey Zacharin. Respondents shall jointly and severally pay the forum fees of this action. The Cross Claim of Lew Lieberbaum & Co., Inc. against Kenneth A. Nightingale is denied.

FORUM FEES

Pursuant to the *Code*, the following Forum Fees are jointly and severally assessed against LLC and Nightingale:

Non-refundable filing fee:	\$ 75.00
Non-refundable Hearing Session fees (1 x \$)	\$ 200.00
Cross Claim Filing Fee:	\$ 500.00
Total Fees:	\$ 775.00

1. Claimant paid \$275.00 and is entitled to a refund in that amount.
2. Respondent LLC paid \$800.00 and is entitled to a refund of \$25.00.

Page 4
NASD Case #93-04101

Sole Public Arbitrator's Signature

A handwritten signature in cursive script, appearing to read "John Edward McCracken".

John Edward McCracken, Esq.

Date of Decision: 6 Aug 1994

NASD DATE OF DECISION: August 5, 1994

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 29 day of July, 1994, before me personally appeared John Edward McCracken, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Luis R. Ancel

LUIS R. ANCEL
Notary Public, State of New York
No. 31-5591635
Qualified in New York County
Commission Expires August 31, 1996