

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Melvin F. Cohen, M.D., P.C., Money
Purchase Plan and Trust, and
Melvin F. Cohen Profit Sharing Trust

Claimants,

v.

No. 93-04303

Daniel K. Brinkel

Respondent.

REPRESENTATION OF PARTIES

Claimants Melvin F. Cohen, M.D., P.C., Money Purchase Plan and Trust, and Melvin F. Cohen Profit Sharing Trust were represented by Stephen R. Levin, Esq. of Farmington Hills, Michigan. Claimants were previously represented by David M. Foster, Esq.

Respondent Daniel K. Brinkel appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on or about October 18, 1993. Claimants' Submission Agreement was signed on October 8, 1993 by Melvin F. Cohen, Trustee of the Melvin F. Cohen, M.D., P.C., Money Purchase Plan and Trust, and Melvin F. Cohen Profit Sharing Trust.

NASD Regulation has no record that Respondent Brinkel filed a Statement of Answer. NASD Regulation has no record that Respondent Brinkel filed a properly executed Submission Agreement.

HEARING INFORMATION

The Hearing was held on October 14, 1996 for one (1) session in Southfield, Michigan.

CASE SUMMARY

Claimants alleged that Respondent Daniel K. Brinkel ("Brinkel"), a registered representative of Roney & Company ("Roney"), recommended to Melvin F. Cohen ("Cohen") that he transfer the Melvin F. Cohen, M.D., P.C., Money Purchase Plan and Trust, and Melvin F. Cohen Profit Sharing Trust (the "Trusts") to Roney. Claimants asserted that, after the Trust accounts were

opened at Roney, Brinkel recommended that Cohen purchase stock in a company called ORS on behalf of the Trusts. Claimants contended that ORS was a very risky investment for extremely aggressive investors, and an unsuitable investment for a retirement plan. Claimants alleged that the Trusts purchased 84,690 shares of ORS for a price of \$152,674.07. Claimants alleged that the total realized and unrealized losses in the Trusts' account from the purchase of ORS was \$145,163.13. Claimants asserted various claims, including: breach of fiduciary duty; fraudulent misrepresentation; innocent misrepresentation; violations of Michigan Blue Sky laws; negligent supervision; and violations of RICO.

During the Hearing, Respondent Brinkel denied all liability to Claimants.

RELIEF REQUESTED

Claimants requested damages in the amount of \$145,163.13, plus interest. Claimants also requested an award of punitive and exemplary damages, attorney fees, and that actual damages be trebled to \$335,489.39 pursuant to RICO.

Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

Claimants settled this dispute with Roney & Company prior to the hearing.

Respondent Brinkel did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 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.

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 NASD Regulation, Inc. Office of Dispute Resolution.

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) That the Statement of Claim is hereby dismissed in its entirety with prejudice; and

- (2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) hearing session x \$750 = \$750 in forum fees. Pursuant to §10332(b) of the Code, 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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees a portion of the hearing session deposit in the amount of \$375 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants. Pursuant to §10332(c) of the Code, Respondent Daniel K. Brinkel is liable for, and shall pay forum fees in the amount of \$375. **Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures

\s\ John F. Burns, Esq.
John F. Burns, Esq.
Chairperson
Public Arbitrator

(undated)
Dated:

\s\ Thomas Kizer, Jr., Esq.
Thomas Kizer, Jr. Esq.
Panelist
Public Arbitrator

October 17, 1996
Dated:

\s\ S. Peter Bayekian
S. Peter Bayekian
Panelist
Industry Arbitrator

October 17, 1996
Dated:

For NASD use only:
Date award served on the parties: November 1, 1996