

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John G. O'Brien

93-04465

Names of Respondents

Robert Todd Financial Corporation,
Frank Zangara,
Robert B. Fallah, and
Todd M. Spehler

REPRESENTATION

Claimant, John G. O'Brien was represented by William H. O'Brien.

Respondent, Robert Todd Financial Corporation did not appear at the hearing.

Respondent, Frank Zangara appeared pro se.

Respondent, Robert B. Fallah appeared pro se except for the October 17, 1995 hearing at which his wife Lisa Fallah, Esq., an attorney appeared additionally on his behalf.

Respondent, Todd M. Spehler was represented by Roger J. Schwarz, Esq. of New York, New York.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on October 27, 1993.

Claimant, John G. O'Brien's Submission Agreement was signed on October 25, 1993.

A Statement of Answer was filed with the NASD by Respondent, Robert Todd Financial Corporation on February 23, 1994.

Respondent, Robert Todd Financial Corporation's Submission Agreement was signed on February 15, 1994 by Larry Zelin, CFO.

Claimant, John G. O'Brien filed and Amended Statement of Claim with the NASD on

August 8, 1994.

Respondents, Robert Todd Financial Corporation and Robert Fallah filed an Answer to the Amended Statement of Claim with the NASD on October 18, 1994.

Respondent, Frank Zangara filed a Statement of Answer with the NASD on or about February 3, 1994.

Respondent, Frank Zangara's Submission Agreement was signed on February 1, 1994.

Respondent, Todd M. Spehler filed an Answer to the Amended Statement of Claim with the NASD on October 18, 1994.

Respondent, Todd M. Spehler's Submission Agreement was signed on October 11, 1994.

HEARING INFORMATION

Pre-hearing conferences were held with the panel chairperson on March 30, 1995 for one (1) hearing sessions and May 11, 1995 for one hearing session.

The hearing took place on: May 18, 1995 for two (2) hearing sessions;
 May 19, 1995 for two (2) hearing sessions; and,
 October 17, 1995 for two (1) hearing session.

The hearing location was Dallas, Texas.

CASE SUMMARY

Claimant, John G. O'Brien ("O'Brien") alleged that Respondent, Frank Zangara ("Zangara") while employed at Respondent, Robert Todd Financial Corporation ("Robert Todd Financial") solicited O'Brien via cold call and convinced him to purchase 500 shares of American Biomed, Inc., a NASDAQ Small-Cap issue, at \$11 per share on June 4, 1992. As part of the account opening process at Robert Todd Financial, Zangara sent O'Brien a signature page from an account agreement but did not send O'Brien the complete agreement. O'Brien signed the document and returned it to Zangara but he did not understand that he had authorized the opening of a margin account. O'Brien alleged that the omission to advise him that he had signed a margin agreement was a violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-16. O'Brien alleged that until November of 1992, he continued to purchase securities on Zangara's recommendation. O'Brien alleged that he was sold 5,000 shares of IVF America, Inc. through a public offering at Zangara's recommendation and at no time did he

receive a prospectus which was a violation of Section 5 of the Securities Act of 1933. O'Brien alleged that commencing in November of 1992 and continuing through 1993, Zangara made a number of unauthorized transactions in O'Brien's account. Among the unauthorized trades were purchases of 5,000 shares of IVF America, 6,000 shares of Champions Sports, Inc., 3,000 shares of Lifecell Corp, 5,000 shares of American Biomed, Inc. and 10,000 shares of Champion Sports, Inc. O'Brien alleged that he learned of the unauthorized trades upon receipt of Regulation T margin call notices. O'Brien paid for the trades but told Zangara not to make any additional unauthorized trades in his account. Despite this admonition, O'Brien alleged that Zangara made additional unauthorized trades in American Biomed, Inc., Lifecell Corp., California Quartz, Inc., American Enterprises, Video Lottery Technology, Inc., Biomechanics Corp., Rally's, Inc., Supermack Technology and Pharmhouse Corp. As a result of Zangara's unauthorized trading activities and Robert Todd Financial's failure to supervise Zangara, he lost substantial sums of money. O'Brien alleged that Zangara's activities violated the Texas Deceptive Trade Practices Act.

Robert Todd Financial denied the allegations of the statement of claim and asserted affirmative defenses, including but not limited to, failure to state a claim upon which relief can be granted, to the extent any wrongdoing occurred by Zangara, he was acting outside the scope of his duties at Robert Todd Financial and the claim was barred by the doctrines of waiver, estoppel and ratification.

Zangara denied the allegations of the statement of claim and asserted that all purchases for O'Brien's account were authorized before they were made. Zangara also asserted affirmative defenses, including but not limited to, the claim was barred by the doctrines of waiver, estoppel and ratification and the claim failed to state a claim upon which relief could be granted.

O'Brien filed an amended statement of claim wherein the allegations were substantially similar to the original claim. However, O'Brien named additional respondents in the amended statement of claim. O'Brien alleged that the controlling persons of Robert Todd Financial, including Respondent, Robert M. Fallah ("Fallah") and Respondent, Todd M. Spehler ("Spehler") had a duty to know and should have known of Zangara's past disciplinary history and as such Fallah and Spehler breached their supervisory responsibilities regarding Zangara which caused O'Brien damages.

Spehler answered the amended statement of claim and denied all allegations of the amended claim.

Robert Todd Financial and Fallah filed a joint answer to the amended claim in which all allegations were denied and affirmative defenses, including but not limited to, waiver, ratification and estoppel were asserted.

RELIEF REQUESTED

O'Brien requested actual damages in the amount of \$181,000.00, plus interest from the date of each unlawful trade, reasonable attorney's fees and for treble damages pursuant to the Texas DTPA, costs and legal interest or in the alternative exemplary damages consisting of actual damages trebled pursuant to common law and Tex. Bus & Comm. Code Section 27.01. O'Brien's amended statement of claim requested damages of not less than \$947,412.

Robert Todd Financial requested dismissal of the original and amended claim in their entirety.

Robert Fallah requested dismissal of the amended statement of claim in its entirety.

Zangara requested dismissal of the statement of claim.

Spehler requested dismissal of the amended statement of claim.

OTHER ISSUES CONSIDERED AND DECIDED

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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claim asserted against Spehler is denied and dismissed in its entirety;
2. Robert Todd Financial, Fallah and Zangara are jointly and severally liable for and shall pay to O'Brien the sum of \$45,595.75 in actual damages and \$50,000.00 in punitive damages. Such damages shall bear simple interest at 10% per annum until paid. In determining to award punitive damages, the arbitrators considered Texas Business and Commerce Code Section 17.50(d), the Texas Securities Act Section 33 and Section 27.01 of the Texas Business and Commerce Code as legal authority provided by Claimant.
3. Robert Todd Financial, Fallah and Zangara are jointly and severally liable for and shall pay to O'Brien, the sum of \$25,866.00 in attorney's fees. In determining to award attorney's fees, the arbitrators considered Texas Business and Commerce Code Section 17.50(d), the Texas Securities Act Section 33 and Section 27.01 of the Texas Business and Commerce Code as legal authority provided by Claimant.

4. Any requests for relief not specifically enumerated herein are specifically denied and dismissed in their entirety; and,

5. The parties shall bear their own costs, expenses and attorney's fees not set forth elsewhere herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee paid to the NASD by O'Brien. The NASD shall retain as O'Brien's portion of the Forum Fees assessed in this matter, the \$750.00 hearing session deposit previously paid to the NASD by O'Brien. Robert Todd Financial, Fallah and Zangara are jointly and severally liable for and shall pay additional forum fees to the NASD in the amount of \$3600.00. Forum Fees were calculated at the rate of \$750.00 per hearing sessions for five (5) hearing sessions and \$300.00 per hearing session for two (2) pre-hearing conferences for a total of \$4350.00 in Forum Fees .

Additional Forum Fees assessed to the parties are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

/s/ Franklin Anthony Arnold
Franklin Anthony Arnold, Esq.
Presiding Chairperson
Public Arbitrator

January 26, 1996
Dated

/s/ Joan Stearns-Johnsen
Joan Stearns-Johnsen
Panelist
Public Arbitrator

January 29, 1996
Dated

/s/ James L. Goble
James L. Goble
Panelist
Industry Arbitrator

January 25, 1996
Dated

For NASD Use Only
Date Award Served on the Parties by the NASD: January 30, 1996