

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Mendel and Sara Bialogorsky

94-00158

Name of Respondent(s)

Mark A. Brannigan
Schneider Securities, Inc.

REPRESENTATION

For Claimants Mendel and Sara Bialogorsky ("the Bialogorskys"): Howard Weinstein, Esq. of the Law Offices of Thomas E. Glick, P.A., Miami, FL.

For Respondents Mark A. Brannigan ("Brannigan") and Schneider Securities, Inc. ("SSI"): Gary Ceriani, Esq. of Davis & Ceriani, P.C., Denver, CO.

CASE INFORMATION

Statement of Claim filed: January 14, 1994. Claimants' Submission Agreement signed on: October 20, 1993.

Joint Statement of Answer filed by Respondents on: April 5, 1994. Respondent SSI's Submission Agreement signed on: April 4, 1994 by Maurice Wise on behalf of SSI. Respondent Brannigan's Submission Agreement signed on: April 4, 1994.

HEARING INFORMATION

On March 22, 1995, January 3, 1996 and April 16, 1996 prehearing conferences were conducted via telephone conference call with a single arbitrator. On October 2, 1996 a prehearing conference was conducted via telephone conference call with the full panel.

On October 9, 10, 11 and 12, 1996 and November 18, 20 and 21, 1996, in Ft. Lauderdale, Florida, hearings lasting 13 sessions were conducted. The November 18, 1996 hearing was conducted via telephone conference call.

CASE SUMMARY

Claimants alleged that Respondent SSI, independently and by and through Respondent Brannigan, its associate member, committed the following wrongful acts which Claimants alleged violated NASD Rules, SEC Rules, Florida Statutes Chapter 517 and common law fraud: taking discretion in a non-discretionary account; fraudulent misrepresentation; excessive mark-ups; unsuitability; altering firm quotes; failure to supervise; breach of implied covenant of good faith and fair dealing; and, common law fraud.

Respondents denied that the initial telephone contact with Claimants was unsolicited and denied the use of high-pressure sales tactics, promises of earnings or that Respondents fraudulently coerced Claimants into buying highly speculative penny stocks. Respondents denied that the SEC penny stock suitability rule was violated and further denied that any misrepresentations or omissions of any material facts were made or that Claimants reasonably relied on any statements made by Respondents to their detriment. Respondents further denied that they engaged in any conduct that violated Florida Statutes and also denied any violations of NASD Rules of Fair Practice, including but not limited to rules prohibiting excessive mark-ups. Respondents asserted that the initial call made by Brannigan to Claimants was solicited by Claimants. Respondents further asserted that the transactions at issue were suitable for Claimants given their investment sophistication, experience and goals. Finally, Respondents alleged that some of the transactions which Claimants complained about were canceled, either at the order of Claimants or due to Claimants not having timely paid for purchases, including transactions that Claimants asserted were not authorized and transactions for which Claimants asserted that stock certificates were not issued.

Respondents asserted affirmative defenses of: waiver; ratification; estoppel; contributory negligence; assumption of risk; failure to mitigate damages; statutes of limitations; and, lack of reliance upon any action or inaction of Respondents.

RELIEF REQUESTED

Claimants requested rescission of all transactions plus damages in the amount of \$41,948.00, plus damages to recover the costs of bringing this action and expert witness fees in the amount of \$6,500.00, plus lost opportunity costs and/or lost interest in the amount of \$17,490.00, plus punitive damages, treble damages, and attorney's fees.

Respondents requested dismissal of the claim plus costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. On August 21, 1995 an Amended Statement of Claim was filed which was not accepted or admitted into evidence by the panel.

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

1. Respondent SSI is found liable and shall pay to Claimants the amount of \$17,000.00 plus prejudgment interest from October 31, 1992 to November 21, 1996 at the rate of 12 % per annum in the amount of \$8,305.71 for a total due to Claimants of \$25,305.71.
2. Claimants' requests for rescission, expert witness fees, punitive damages, and attorney's fees are denied.
3. Respondent SSI is also found liable and shall pay to Claimants \$400.00 representing a reimbursement of the hearing session deposit previously paid by Claimants to the NASD.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure (formerly Section 43(c)), the panel has assessed forum fees in the amount of \$11,400.00 (13 Sessions x \$750.00 per session plus \$750.00 for the prehearing conference with the full panel on October 2, 1996 plus 3 prehearing conferences with a single arbitrator (3 x \$300.00 per prehearing conference)).

1. Respondent SSI is hereby assessed \$11,400.00. The NASD shall retain the \$400.00 previously deposited by Claimants in partial satisfaction thereof, leaving a balance due to the NASD of \$11,000.00.
2. The NASD shall retain the \$400.00 previously paid by Claimants for the postponement of the March 27 and 28, 1995 hearing dates.
3. The NASD shall refund to Claimants the \$400.00 postponement fee deposit paid for the postponement request of the October 9, 10, 11 and 12, 1996 hearings, which postponement request was denied.

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Award

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4. The NASD shall refund to Claimants the \$30.00 overpayment made by Claimants to the NASD.

5. Respondent SSI is hereby assessed \$400.00 for the postponement of the hearing which was scheduled for July 5 and 6, 1995.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

_____/s/_____
Ralph L. Smathers

Public/Chairman

_____/s/_____
Michael Lau

Public

_____/s/_____
Peter Olin

Industry

Date of Decision: January 22, 1997