

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jay Rosoff, D.D.S. and Paula Rosoff

94-00432

Name of Respondents and Third-Party Claimants

The First Boston Corporation
Mark J. McAvoy

Name of Third-Party Respondent

Jay L. Vodofsky

REPRESENTATION

For Claimants, Jay Rosoff, D.D.S. and Paula Rosoff ("Rosoff"): John R. Kiefner, Jr., Esq. of Riden, Earle & Kiefner, P.A., St. Petersburg, Florida.

For Respondents and Third-Party Claimants, The First Boston Corporation ("First Boston") and Mark J. McAvoy ("McAvoy"): Lori S. Sherman, Esq. and Robinson B. Lacy, Esq. of Sullivan & Cromwell, New York, New York.

For Third-Party Respondent, Jay. L. Vodofsky: Robert I. Bodian, Esq. of Bodian & Eames, New York, New York.

CASE INFORMATION

Statement of Claim filed: February 4, 1994.

Claimants, Jay and Paula Rosoff's, Submission Agreement signed: January 31, 1994.

Statement of Answer and Third-Party Claim filed: May 13, 1994, by Respondents and Third-Party Claimants, First Boston and McAvoy.

Respondent and Third-Party Claimant, First Boston's, Submission Agreement signed: April 19, 1994, by Raymond J. Dorado on behalf of his firm.

Respondent and Third-Party Claimant, McAvoy's, Submission Agreement signed: April 20, 1994.

Statement of Answer to the Third-Party Claim filed: July 18, 1994.

Third-Party Respondent, Vodofsky, did not sign a Submission Agreement as required by Section 8 of the Code of Arbitration Procedure.

HEARING INFORMATION

On June 12 and 13, 1996, in Tampa, Florida, hearings lasting 4 sessions were conducted.

CASE SUMMARY

Claimants alleged that, after discussing their investment objective of conservatism with Vodofsky who was a vice president at First Boston in the fixed income department and is Mr. Rosoff's brother-in-law, they opened up several accounts at First Boston. Claimants further alleged that they were never told the identity of their account representative that all communications took place between them and Vodofsky and that no advance disclosure of every purchase and sale of Ratners APS in the account, were given to them. Furthermore, Claimants alleged that Respondents assumed de facto control over Claimants' account notwithstanding the absence of discretionary trading authorization, resulting in substantial damages. More specifically, Claimants alleged i) breach of fiduciary duty, ii) fraud, iii) negligence and gross negligence, and iv) civil remedies for criminal practices.

Respondents denied any all allegations of wrongdoing. Furthermore, Respondents alleged that Third-Party Respondent, Vodofsky, gave instructions regarding each purchase and sale of Ratner APS to McAvoy who, in view of the familial relationship between the Claimants and Vodofsky thought it unnecessary to seek to impose himself upon the Claimants. Respondents also alleged that Claimants are wealthy and well-educated and were competent to make a decision as to whether they should look exclusively to Vodofsky for advice or whether they should confer with others at First Boston in addition to or instead of Vodofsky.

Respondents alleged the following affirmative defenses: i) contributory negligence, ii) waiver, ratification and estoppel, iii) failure to state a claim upon which relief can be granted.

Furthermore, Respondents filed a third-party claim and alleged that if First Boston and McAvoy was found liable to Claimants, Respondents would be entitled to have their fault, if any,

apportioned with that of Third-Party Respondent, Vodofsky, and to recover from him based on his relative fault.

Third-Party Respondent denied any and all allegations of wrongdoing and alleged that the Third-Party Claim failed to state a claim upon which relief can be granted and that it is barred in whole or in part by laches, waiver, release, accord and satisfaction, estoppel, ratification, unclean hands and applicable statute of limitation.

RELIEF REQUESTED

Claimants requested the following relief: i) rescission for the aforementioned investment transactions, for a total investment of \$400,000.00, less any distributions, ii) interest at the statutory rate of 12% per year, iii) attorney's fees, iv) treble damages or punitive damages in the amount of \$650,000.00, and v) such other and further relief as the panel deemed just and appropriate.

Respondents requested that the Panel dismiss Claimants' demand for arbitration in its entirety and award First Boston its costs and attorneys' fees and such other and further relief as the Panel deemed just and proper. If, however, the Panel rendered any monetary award in favor of the Claimants and against Respondents, Respondents requested that the Panel i) enter an award in the same amount in favor of Respondents and against Third-Party Respondent Vodofsky or, alternatively, ii) award Respondents contribution from Third-Party Respondent Vodofsky on the basis of their respective fault (if any fault be found), and further award Respondents their costs and attorneys' fees and such other and further relief as the Panel deemed just and proper.

Third-Party Respondent requested that the Answer and Third-Party Claim be dismissed as against him with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

Claimants confirmed the dismissal of the claims asserted in the Statement of Claim against Respondents, First Boston and McAvoy, by entering into a Stipulation of Dismissal. The dismissal did not affect First Boston's and McAvoy's Third-Party Claim against Third-Party Respondent, Vodofsky. Therefore, the award below only involves First Boston's and McAvoy's Third-Party Claim against Third-Party Respondent Vodofsky.

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. Third-Party Respondent, Vodofsky, is found not liable and therefore, all claims against him are hereby dismissed.
2. Third-Party Claimants, First Boston's and McAvoy's, request for attorneys' fees is denied.
3. All other claims are hereby denied.

OTHER COSTS

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

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed the following Forum Fees in the amount of \$4,000.00 (4 sessions x \$1,000.00).

1. Respondents and Third-Party Claimants, First Boston and McAvoy, are hereby assessed \$4,000.00, jointly and severally, payable to the national Association of Securities Dealers, Inc.
2. Respondents and Third-Party Claimants, First Boston and McAvoy, jointly and severally, shall pay the NASD the non-refundable third-party filing fee in the amount of \$500.00.
3. Respondent and Third-Party Respondent, First Boston, shall pay the NASD the non-refundable member surcharge of \$500.00.
4. The NASD shall retain the non-refundable filing fee in the amount of \$250.00 and the hearing deposit fee of \$1,000.00 previously deposited by the Claimants.

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

Arbitrators' Signatures

Name	Public/Industry
<u>/s/</u> James F. Turner, III	Public
<u>/s/</u> Joseph A. Weston	Public
<u>/s/</u> William G. Kline	Industry

Date of Decision: July 25, 1996