

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Madine S. Ringley, by
Lillian P. Diedrich, Attorney-in-Fact

94-00862

Name of Respondents

Roney & Co.;
James Buehler

REPRESENTATION

For Claimant: Madine S. Ringley, by Lillian P. Diedrich, Attorney-in-Fact ("Ringley") was represented by Laurence S. Schultz, Esq. of Driggers, Schultz, Herbst & Paterson, located in Troy, Michigan.

For Respondents: Roney & Co. ("Roney") and James Buehler ("Buehler") were represented by Steven Ribiat, Esq. of Honigman, Miller, Schwartz & Cohn, located in Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed: February 14, 1994.

Claimant's Submission Agreement signed on: January 17, 1994 by Lillian P. Diedrich, Attorney-in-Fact.

Statement of Answer filed by Respondents Roney and Buehler on: May 12, 1994.

Respondent Roney's Submission Agreement signed on: June 1, 1994.

Respondent Buehler did not file an executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference:

None held.

Hearing Dates/Sessions:

May 18, 1994 for Two (2) sessions.

May 19, 1994 for Two (2) sessions.

Hearing Location:

Detroit, Michigan.

CASE SUMMARY

Claimant, Ringley, alleged that Respondent Buehler, while employed by or acting as an agent for Respondent Roney, breached the fiduciary duty owed to Claimant Ringley by engaging in unsuitable trading, misrepresentation, omissions, unauthorized trading and negligence. This injurious conduct resulted in a heavy tax assessment of \$50,000.00. Specifically Claimant Ringley alleged that:

1. In May of 1992, Ringley became incapacitated and her niece, Mrs. Diedrich, acted as her attorney-in-fact in all Ringley's matters. In February 1993, Mrs. Diedrich opened an account in Ringley's name with Respondents Roney and Buehler in order to consolidate and update Ringley's stock certificates;
2. Mrs. Diedrich indicated to Buehler that the account should be maintained as a holding account. The securities deposited in the account had an approximate value of \$300,000.00;
3. Shortly after Ringley's account was opened, Buehler recommended that the account should be diversified. Mrs. Diedrich, an unsophisticated investor, followed Buehler's recommendations;
4. Buehler's negligent recommendations resulted in an unnecessary capital gains tax of \$50,000.00; and
5. In August 1993, Mrs. Diedrich requested that Buehler stop all transactions. Soon after, Buehler engaged in the unauthorized trading of the stock in the Chilean telephone company.

Based upon the above allegations, Ringley asserted claims for breach of fiduciary duty; misrepresentation and deceptive practices; violation of §12(2) of the Securities Act of 1933; violation of §410(a)(2) of the Michigan Uniform Securities Act; violation of §3(1)(a), (b)(b) and (c)(c) of the Michigan Consumer Protection Act; violation of §10(b) and Rule 10(b)(5) of the Securities Exchange Act of 1934; common law fraud; negligence; and breach of contract. In addition, Ringley asserted claims against Roney under *respondeat superior*.

Respondents Roney and Buehler denied all wrongdoing in the administration of Ringley's account. Respondents Roney and Buehler specifically asserted that:

1. Brokers are prohibited from providing tax advice;
2. Ringley's initial portfolio was concentrated in a volatile stock, and

diversification was recommended to provide safety;

3. There were no unauthorized transactions; and

4. Buehler's recommendations resulted in a well-balanced and prosperous portfolio.

RELIEF REQUESTED

Claimant Ringley requested entry of an award against Respondents Roney and Buehler for \$50,000.00 for actual damages. In addition, Ringley requested interest, costs and attorney fees under Section 410 of the Michigan Uniform Securities Act; exemplary damages; and such other relief the panel deems just and equitable.

Respondents Roney and Buehler requested that the claim be dismissed in its entirety and that the Panel award them costs and fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent James Buehler did not file an executed submission agreement, but answered and appeared at hearing. Pursuant to Section 12 of the NASD Code of Arbitration Procedure, Respondent James Buehler is required to submit to arbitration.

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

1. Respondents Roney & Co. and James Buehler are jointly and severally liable for and shall pay to Claimant Madine S. Ringley, by Lillian P. Diedrich, Attorney in Fact, the sum of \$49,500.00, plus \$6,000.00 as interest;

2. Respondents Roney & Co. and James Buehler are jointly and severally liable for and shall pay to Claimant Madine S. Ringley, by Lillian P. Diedrich, Attorney-in-Fact, the sum of \$12,000.00 as attorney's fees. In deciding to award attorneys' fees, the Panel considered the arguments of the parties, as well as the Michigan

State Blue Sky Law, and determined that authority existed for an award of attorneys' fees to the Claimant;

3. The claims for exemplary damages are denied;
4. All remaining costs of arbitration, including any additional attorneys' fees, shall be borne by the party incurring the cost, except for those costs specifically enumerated herein; and
5. Any relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$400.00 per session = \$1,600.00. The National Association of Securities Dealers, Inc. shall retain the \$120.00 non-refundable claim filing fee and the \$400.00 hearing session deposit previously deposited by Claimant. Claimant Madine S. Ringley, by Lillian P. Diedrich, Attorney-in-Fact, is liable for and shall pay to the NASD the sum of \$400.00 as additional forum fees. Respondent Roney & Co. is liable for and shall pay to the NASD the sum of \$200.00 as the surcharge required under Section 45 of the NASD Code of Arbitration Procedure. In addition, Respondents Roney & Co. and James Buehler are jointly and severally liable for and shall pay to the NASD the sum of \$800.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/s/ Elbert C. Mackey
Elbert C. Mackey, Esq.
Public Arbitrator
Chairperson

July 27, 1995

/s/ Burton L. Ansell, Esq.
Burton L. Ansell, Esq.
Public Arbitrator

July 21, 1995

/s/ Brace K. Case, Esq.
Brace K. Case, Esq.
Industry Arbitrator

July 20, 1995

For NASD Use Only

Date of Decision: August 8, 1995