

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Howard P. and Iris Johnson, Trustees

94-01026

Name of Respondents

**D.H. Blair & Company, Inc.
Naftali Feigenbaum**

REPRESENTATION

For Claimants Howard P. Johnson and Iris Johnson, Trustees ("Johnsons"): Mark A. Tepper, Esq., Fort Lauderdale, Florida.

For Respondent D.H. Blair & Company, Inc. ("Blair"): Todd C. Streckler, Esq., of Bachner, Tally, Polevoy & Misher, New York, New York.

For Respondent Naftali Feigenbaum ("Feigenbaum"): Pro Se, New York, New York.

CASE INFORMATION

Statement of Claim filed: March 16, 1994. Claimants' Submission Agreement signed on: March 9, 1994.

Statement of Answer filed by Respondent, Blair on: July 6, 1994. Respondent, Blair's Submission Agreement signed on: June 20, 1994, by Michael Kiey, Esq., Senior Vice President of Blair.

Statement of Answer filed by Respondent, Feigenbaum on: July 7, 1994. Respondent, Feigenbaum's Submission Agreement signed on: July 7, 1994.

HEARING INFORMATION

On November 30, and December 10, 1994, in Fort Lauderdale, Florida, pre-hearing conferences lasting 2 sessions were conducted via telephone conference call with an arbitrator.

On December 13, 14, 15, and 16, 1994, in Fort Lauderdale, Florida, hearings lasting 8 sessions were conducted.

CASE SUMMARY

Claimants, alleged that the Respondents made five unauthorized trades in Johnson's account. The Claimants' further alleged that the Respondent failed to disclose to Claimants that their Omega warrants could be converted to stock at a favorable price. The Claimants' also alleged that the Respondents made unreasonable predictions and representations about future profits and misrepresentations to the Claimants' that Feigenbaum would correct the unauthorized transactions.

Claimants specifically alleged that: the Respondents violated the Florida Civil Theft Statute Section 812.014, and the Florida Securities and Investor Protection Act Section 517.301 of the Florida Statutes, the federal anti-fraud provisions, breached their fiduciary duty, committed common law fraud, failed to supervise the broker, and were negligent, and breached the contract.

Respondent, Blair denied all allegations of wrongdoing and alleged the following: the Claimants failed to state a claim upon which relief could be granted; Claimants' claims are barred by waiver and ratification; Claimants' are barred by the doctrine of laches; Claimants' are estopped from bringing their claim; Claimants' are sophisticated investors and assumed the risk of their investments; the investments were suitable for the Claimants based on the facts disclosed by the Claimants; Claimants' are barred by the applicable statute of limitation; Claimants failed to mitigate their damages; Respondent Blair acted in good faith; Claimants' did not rely upon Blair; Claimants' are not entitled to punitive damages; Claimants' cause of action is barred by the Statute of Frauds; and, any losses by the Claimants were because of normal market fluctuations.

Respondent, Blair Counter-Claimed that the Claimants Claim contains defamatory statements. Blair also Cross-Claimed Respondent Feigenbaum for contribution and indemnification.

Respondent, Feigenbaum denied all allegations of wrongdoing and alleged that any losses by the Claimants were because of normal market fluctuations.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$37,500.00, attorney's fees and, cost of this proceeding.

Respondent Blair requested dismissal of the Claim, and an award of Blair's costs of this proceeding.

Respondent Blair Counter-Claimed the Claimants and requested damages in an unspecified amount.

Respondent Feigenbaum requested dismissal of the Claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies. 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 Blair and Feigenbaum are found liable, jointly and severally, for violation of Section 517.301 of the Florida Statutes and shall pay to the Claimants the amount of \$32,278.83 pursuant to that Statute.
2. Claimants are found not liable to Respondent, Blair and, therefore, the Counter-claim against them is hereby dismissed.
3. The Panel finds that Blair shall pay the attorneys fees of the Claimants in an amount that shall be determined by a Court of competent jurisdiction.
4. Cross-Respondent, Feigenbaum is found not liable to Cross-Claimant, Blair and, therefore, the cross-claim against him is hereby dismissed.

OTHER COSTS

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 assessed forum fees in the amount of \$3800.00 (2 pre-hearing sessions x \$300.00 per pre-hearing session plus 8 hearing sessions x \$400.00).

1. Respondents are hereby assessed \$3800.00, jointly and severally, for which the NASD shall retain the \$600.00 previously deposited by the Respondents and the \$830.00 deposited by the Claimants in partial satisfaction thereof leaving a balance due to the NASD of \$2370.00.
2. The NASD shall retain the non-refundable filing fee of \$500.00 paid by the Respondents.
3. The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimants.
4. The Respondents, jointly and severally, shall refund to the Claimants the \$830.00 that the Claimants had previously paid to the NASD. this represents the \$400.00 hearing session deposit and the \$430.00 overpayment made by Claimants.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

IS/
Arthur J. Leibell, Esq., P.A.

Public

IS/
Richard M. Kowalske

Industry

IS/
Michael Lau

Public

Date of Decision: 2-21-95