

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Harold W. Estill

94-01636

Name of Respondents

Brokers Investment Corporation  
Norman Shubert  
Daniel Steinberg  
Michael Markow  
Jonathan Shoucair  
Raymond Niesslein  
Sovereign Cap. Group, a California Corp  
William Lawrence Securities, Inc.  
Martin W. May

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**REPRESENTATION**

For Claimant Harold W. Estill ("Claimant") appeared John L. Campbell, Esq. of the law firm Kohnen & Patton located in Cincinnati, Ohio.

For Respondent Michael Markow ("Markow") appeared Michael R. Matthias, Esq. of the law firm Matthias & Berg located in Los Angeles, California.

Respondents Brokers Investment Corporation ("Brokers Investment"), Daniel Steinberg ("Steinberg"), Jonathan Shoucair ("Shoucair"), Raymond Niesslein ("Niesslein"), Sovereign Capital Group, a California Corporation ("Sovereign"), William Lawrence Securities, Inc. ("William Lawrence") and Martin May ("May") did not enter an appearance at the hearing in this matter.

**CASE INFORMATION**

Statement of Claim filed: April 26, 1994.

Claimant's Submission Agreement signed on: April 22, 1994.

Amended Statement of Claim filed: January 10, 1995.

Statement of Answer filed by Respondent Shubert on: August 1, 1994.

Respondent Shubert's Submission Agreement signed on: August 1, 1994.

Statement of Answer filed by Respondent Markow on: August 1, 1994.

Respondent Markow's Submission Agreement signed on: August 3, 1994.

Statement of Answer filed by Respondent Shoucair on: July 1, 1994.

Respondent Shoucair's Submission Agreement signed on: July 1, 1994.

Statement of Answer filed by Respondent Niesslein on: July 25, 1994.

Respondent Niesslein's Submission Agreement signed on: July 18, 1994.

Respondents Brokers Investment, Sovereign Capital and William Lawrence, Steinberg and May did not file Statements of Answer nor submit executed Submission Agreements in this matter.

### **HEARING INFORMATION**

Hearing Date/Sessions: July 10, 1995 - 2 sessions

The hearings were held at the Cincinnati Bar Association located in Cincinnati, Ohio.

### **CASE SUMMARY**

Claimant alleged that, in 1991, he was solicited by Shoucair of Brokers Investment. Claimant further alleged that Shoucair encouraged him to invest in four limited partnerships and that Shoucair predicted that these investments would have an annual return of approximately 25%. Claimant further alleged that, between August 1991 and March 1992, Shoucair invested a total of \$161,250.00 from his IRA and other investment funds in the following four limited partnerships: Switch Partners Ltd.; Insurance Billing Partners Ltd.; Gateway Partners Ltd.; and Big Apple Switch Partners Ltd. In addition, Claimant alleged that the corporate general partners of the four limited partnerships were Sovereign and Sovereign Capital Group, a Nevada Corporation and that the general partners were operated and controlled by Shubert.

Claimant alleged that Shoucair violated the Ohio Blue Sky Law because he was not licensed at the time he sold the limited partnerships on August 12, 1991 and August 21, 1991. In addition, Claimant alleged that the limited partnerships that were sold to him were not registered with the Ohio Division of Securities as required by the Ohio Blue Sky Law. Claimant further alleged that Markow, Shubert, Steinberg, Sovereign, Brokers Investment and William Lawrence also participated in the sale of unregistered securities and, therefore, were liable to him for the price he paid for the securities pursuant to the Ohio Blue Sky Law.

Claimant alleged that during this period his investment objectives were long-term growth, preservation of capital and income. Claimant further alleged that he relied exclusively upon

Shoucair, Markow, May, Shubert and Steinberg for investment decisions and direction with respect to these investments. Claimant also alleged that, pursuant to the advice of the Shoucair and Markow and the approval of May, Niesslein, Shubert and Steinberg, he allowed over 37% of his investments to be invested in inappropriate investments. Claimant further alleged that Respondents collaborated to place him in high risk securities.

Claimant alleged that Shoucair and Markow utilized standard office sales practices which resulted in pressurized sales tactics in which they misrepresented certain information about Fiberline Corporation and the potential returns of the limited partnerships. Claimant also alleged that Shoucair and Shubert misrepresented the success of the limited partnerships. Claimant further alleged that the officers and supervisors of Shoucair and Markow at Broker Investment and William Lawrence, including Shubert, Steinberg, Niesslein and May, failed to prevent Shoucair and Markow from using such inappropriate and misleading sales procedures.

Shubert and Markow maintained that they did not participate in the sales to Claimant and maintained that Claimant purchased the limited partnerships pursuant to a confidential private placement memoranda which fully, completely and accurately disclosed all aspects of the investments made. Shubert and Markow further alleged that Claimant was a sophisticated investor, with substantial net worth and was qualified to make important investment decisions regarding the limited partnership investments in question. Shubert and Markow maintained that the investments were properly registered or exempt from registration pursuant to all applicable federal and state laws and that they were sold by persons properly licensed. Shubert and Markow further maintained that Claimant's claims were barred by the applicable statute of limitations.

Shoucair maintained that when he was employed by Brokers Investment, he was told he was registered in all of the states in which Brokers Investment was doing business which included the state of Ohio. Shoucair also maintained that it was Brokers Investment's responsibility to register him. Shoucair further maintained that he was encouraged to sell the limited partnerships and that he was told the limited partnerships had a U.C.C. lien on the equipment securing the investors' principle and that the investors would not lose their investment. Shoucair maintained that he had to rely on information given to him by Brokers Investment and that he did not disregard Claimant's investment needs, but truly believed that Claimant would make a good return on his investments.

Niesslein maintained he was not involved in the sale of the limited partnerships, directly or indirectly, by way of compensation, overrides or supervision responsibilities. Niesslein further maintained that he was not the assigned supervisor of Shoucair and that he did not give written approval or endorsement of the limited partnership investments. Niesslein also maintained that he was not designated as a principal responsible for limited partnership sale or supervision, that his offices were separate and segregated from the limited partnership division and that he did not benefit from the transactions.

#### **RELIEF REQUESTED**

Claimant requested the following:

1. Rescissory relief against the Respondents jointly and severally on their participation in the sales of securities in violation of Ohio Blue Sky Law and return of \$161,250.00 plus interest;
2. Damages which he suffered as a result of his investment in the amount of \$240,000.00, being the difference between the present value of the securities and the expected value of the securities had Mr. Shoucair's representation of 25% return been accurate;
3. An award of punitive damages against Respondents for making inappropriate investments; and
4. An award of attorneys' fees and other costs incurred in bringing this proceeding, including the filing fee.

Respondents Shubert and Markow requested that Claimant take nothing by virtue of his claims and that the matter be dismissed.

Respondent Niesslein requested that he be dismissed from the proceedings.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The Statement of Claim also named Sovereign Capital Group, a Nevada Corporation and Partnership Services Corporation as Respondents. Sovereign Capital Group, a Nevada Corporation and Partnership Services Corporation were removed as named respondents in this matter pursuant to the Judgment of Permanent Injunction dated May 7, 1993, signed by Judge William Matthews Byrne of the United States District Court, Central District of California.

The panel made the following rulings as to those Respondents who fail to submit a Statement of Answer and submission Agreement and/or did not appear at the hearing conducted in this matter:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Brokers Investment and William Lawrence were members of the NASD at the time this controversy arose and, consequently the panel found personal jurisdiction over Broker Investment and William Lawrence.
3. The panel found that Steinberg, Shoucair, Niesslein and May were associated persons of a member of the NASD at the time this controversy arose and, therefore, the panel found personal jurisdiction over Steinberg, Shoucair, Niesslein and May pursuant to section 12 of the Code.
4. The panel found that there existed a duly executed and enforceable arbitration agreement between Sovereign and Claimant and, therefore, the panel found personal jurisdiction over Sovereign pursuant to Section 12 of the Code.

5. In view of (2), (3) and (4) above, the panel found that Brokers Investment, William Lawrence, Sovereign, Steinberg and May were required to file with the NASD Statements of Answer and properly executed submission Agreements, pursuant to Section 25(b) of the Code.
6. In accordance with Sections 21, 26 and 29 of the Code, the panel found that the NASD provided Brokers Investment, Steinberg, Shoucair, Niesslein, Sovereign, William Lawrence and May with due notice of the hearings conducted in this matter by regular and certified mail. The panel determined to proceed with the hearing without these Respondents, whose absences were unexcused.

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. Respondents Brokers Investment, Shubert, Steinberg, Markow, Shoucair, Sovereign and May be and hereby are jointly and severally liable and shall pay Claimant the sum of \$161,250.00 plus interest at the rate of 10% per annum from the date of each investment by the Claimant until payment of the award.
2. Respondents Brokers Investment, Shubert, Steinberg, Markow, Shoucair, Sovereign and May be and hereby are jointly and severally liable and shall pay Claimant the sum of \$10,000.00, representing attorneys' fees.
3. All claims against Respondents Niesslein and William Lawrence be and hereby are dismissed in their entirety.
4. Claimant's requests for punitive damages be and hereby is denied.
5. Each party shall bear their respective costs.
6. All other claims are hereby denied.

### **FORUM FEES**


Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$200.00 non-refundable filing fee submitted by Claimant and have assessed the following forum fees:

2 hearing session x \$750.00 = \$1,500.00 minus hearing session deposit of \$750.00 = net \$750.00 due.

Respondents Brokerage Investment, Shubert, Steinberg, Markow, Shoucair, Sovereign and May be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$750.00, representing the outstanding forum fees.

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

**ARBITRATORS' SIGNATURES**

  
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Louis P. Soffman, Esq.  
Public Chairperson

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Ralph J. Lorenzetti  
Public Arbitrator

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John A. Whalen  
Industry Arbitrator

Date of Decision: December 19, 1995


Respondents: Brokers Investment, Shubert, Steinberg, Markow, Shoucair Sovereign and May  
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