

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Julia C. McKeon Trust, J.C. McKeon, trustee
Claimants

NASD Arbitration
No. 95-00045

v.

Emmett A. Larkin Company, Inc.,
First Heritage Investment Company,
Agostino J. Zolezzi
Respondents

REPRESENTATION OF PARTIES

Julia C. McKeon Trust, J.C. McKeon, trustee ("Claimants") was represented by A. Kendall Wood, Esq., Hinchy Witte Wood Anderson & Hodges, San Diego, California.

Emmett A. Larkin Company, Inc. ("Respondent") was represented by Melvin L. Peterson, Esq., San Francisco, California.

First Heritage Investment Company ("Respondent") was represented by Agostino J. Zolezzi.

Agostino J. Zolezzi ("Respondent"); pro se.

CASE INFORMATION

Claimants' Statement of Claim was filed on January 3, 1995. Claimants' Submission Agreement was signed on December 9, 1994.

Respondent Emmett A. Larkin Company's Statement of Answer was filed on or about March 14, 1995. Emmett A. Larkin Company's Submission Agreement was signed on March 9, 1995.

Respondent First Heritage Investment Company and Agostino Zolezzi's Joint Statement of Answer was filed on or about April 26, 1995. First Heritage Investment Company's Submission Agreement was not submitted. Agostino Zolezzi's Submission Agreement was signed on April 21, 1995.

HEARING INFORMATION

A pre-hearing conference was held on December 11, 1995.

The hearing was held on February 12 and 13, 1995 in San Diego for a total of 4 sessions.

CASE SUMMARY

Claimants alleged that the Respondents engaged in unauthorized sale of unsuitable securities. Claimants further alleged that the Respondents churned the account to such an extent that the turnover rate was over 500%. Claimants further alleged that the Respondents did most all of the trading through the aggressive utilization of margin trading, a practice with which the Claimants had very limited knowledge. Additionally, the Claimants alleged the Respondents ignored Claimants' stated investment objectives and conspired to defraud the Claimants and that these actions constituted violations of The Securities Exchange Act of 1934: Sec 10(b) and Rule 10b-5.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically argued that the account held by the Claimants was not a discretionary account and that the Claimants were aware of all trades that were made through phone calls and visits by the Respondents. Respondents further argued that because the Claimants were pursuing an aggressive trading strategy to recoup for earlier losses initiated with another firm, and because the Claimants had utilized margin and a covered call trading program during an earlier relationship with the Respondents, that such practices were acceptable, suitable and in fact ratified by the Claimants.

RELIEF REQUESTED

Claimants requested an award in the amount to be determined according to proof at the hearing plus interest from September 10, 1991. Claimants also requested an unspecified amount of punitive damages, attorney fees and all costs.

Respondents First Heritage Investment Company and Agostino J. Zolezzi requested that the claims asserted against it be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

The Claimants dismissed Emmett A. Larkin Company, Inc. as a Respondent prior to the hearing.

Respondent First Heritage Investment Company did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure. Respondent First Heritage Investment Company answered the claim,

appeared and testified at the hearing and is bound by the determination of the arbitration panel on all issues submitted.

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

FINDINGS

Respondents First Heritage Investment Company and Agostino Zolezzi acted negligently and in breach of the fiduciary relationship created between claimant and respondent by engaging in a course of trading over a period of approximately thirty-three months in which trading was excessive in frequency and unsuitable in quality for the Claimants considering her economic circumstances and lack of sophistication and understanding of the matters involved.

AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing, and the final arguments of the Claimants and the Respondents, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents First Heritage Investment Company and Agostino Zolezzi are jointly and severally liable and shall pay to Claimants the sum of \$92,266.00 in compensatory damages. This figure includes interest at 7% from July 27, 1994 to February 12, 1996;
2. Respondents First Heritage Investment Company and Agostino Zolezzi are jointly and severally liable and shall pay to Claimants \$51,000 in punitive damages. See J. Alexander Securities, Inc. v. Signe Mendez (1993) 17 Cal.App.4th 1083; Hobbs v. Bateman Eichler, Hill Richards, Inc. (1985) 164 Cal. App. 4th 1083; Stokes v. Hansen (1990) 217 Cal. App. 3rd 187; Miley v. Oppenheimer & Co. 637 F.2nd 318 (5th Cir. 1981);
3. Respondents First Heritage Investment Company and Agostino Zolezzi are jointly and severally liable and shall pay to Claimants \$20,000 in attorney fees pursuant to California Civil Code 3333 and California Civil Code 1709 and 1710;
4. Respondents First Heritage Investment Company and Agostino Zolezzi are jointly and severally liable and shall pay to Claimants \$650.00 in costs;
5. Respondents First Heritage Investment Company and Agostino Zolezzi are jointly and severally liable and shall pay to Claimantss interest calculated at 7% on the total award amout from the date of the award until the date the award is satisfied.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were 4 sessions x \$500 = \$2,000 in forum fees, plus 1 pre-hearing conference session x \$300=\$300, for a total of \$2,300.00 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimants Julia C. McKeon Trust, J.C. McKeon, trustee.

Pursuant to §43(c) of the Code of Arbitration Procedure, all forum fees are assessed joint and several against First Heritage Investment Company and Agostino Zolezzi. The calculated hearing session amount was \$500 based on the amount of the claim pursuant to §43 of the Code.

Total Fees

4 Hearing Sessions @ \$500.00 =	\$2,000.00
1 Pre-hearing session @\$300.00=	<u>\$ 300.00</u>
Total	\$2,300.00

Respondent's First Heritage Investment Co. and Agostino Zolezzi's share	\$2,300.00
Credit for deposit	<u>\$ -0.00-</u>
Balance	\$2,300.00


Pursuant to §45 of the Code, the NASD shall retain the member surcharge fees in the amount of \$300 previously paid by former Respondent Emmett A. Larkin Company and Respondent First Heritage Investment Company.

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

Dated:

William L. Merkin, Esq.
Public Arbitrator, Presiding Chair

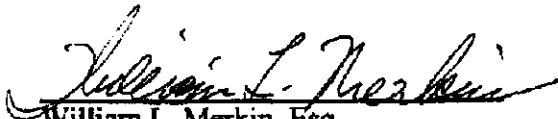
Philip W. Burge
Public Arbitrator


Ken D. Foster
Industry Arbitrator

3/22/96

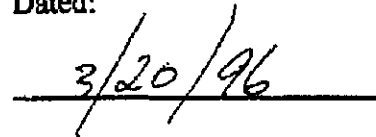
Date served: 3/26/96

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



William L. Merkin, Esq.
Public Arbitrator, Presiding Chair

Dated:



3/20/96

Philip W. Burge
Public Arbitrator

Ken L. Foster
Industry Arbitrator

Date served: 3/26/96

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

Dated:

William L. Merkin, Esq.
Public Arbitrator, Presiding Chair

Philip W. Burge
Philip W. Burge
Public Arbitrator

March 25, 1996

Ken L. Foster
Industry Arbitrator

Date served: 3/26/96