

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Bernard B. Cohen

95-00138

Name of Respondent(s)

Doft & Co., Inc.
Alan Doft

REPRESENTATION

For Claimant Bernard B. Cohen ("Cohen") Mr. Howard S. Eilen, Esq. of Lehman & Eilen Uniondale, NY.

For Respondents Doft & Co. and Alan Doft ("Doft"): Mr. Gary J. Mennitt, Esq. of Shereff, Friedman, et. al, New York, NY.

CASE INFORMATION

Statement of Claim filed: January 10, 1995.

Claimant's Submission Agreement signed on: November 7, 1994.

Statement of Answer filed by Respondents, April 6, 1995.

Respondents, Submission Agreements signed on: February 15, 1995.

HEARING INFORMATION

On November 6, 1995 a hearing lasting two sessions was conducted in Ft. Lauderdale, Florida.

CASE SUMMARY

Claimants filed a Statement of Claim seeking compensatory and punitive damages, interest, costs and attorney's fees with respect to an investment in Hyperion 1997 Trust and Hyperion 2002 Trust (collectively "Hyperion") in October of 1992.

Claimant alleged that Doft and Co., Inc. through its president and principal Alan Doft made material misrepresentations and failed to state material facts with respect to an investment in Hyperion, including the risks attendant thereto. Claimant also alleged that Alan Doft's recommendation of Hyperion was not appropriate or suitable for the Claimant in light of his age (75 years old), life style (retired since 1982) and income (social security and interest). Nearly one third of the Claimant's total net worth was invested in Hyperion at the recommendation of Alan Doft. In approximately one year, the value of the Claimant's investment declined by approximately 30%.

Respondents denied all allegations of wrongdoing and alleged that Claimant was the ultimate sophisticated investor. Cohen was the head of his own successful insurance brokerage firm, and in addition served on the board of directors of both an insurance company and a bank. Cohen clearly understood the risk/reward ratio of the Hyperion Securities, both because of his extensive insurance background and because of his educated decision to purchase two different maturities of Hyperion, thus opting for two different rates of return. Cohen purchased Hyperion term trust with the purchase price to be refunded at maturity (5 and 10 years), but he then opted not to wait until the maturity date, and he sold a mere one year after his purchase. Cohen knew that there was never a guarantee of no market fluctuation. Cohen's purchase of Hyperion was a completely unsolicited order, and prospectuses were sent to Cohen with his confirmation slips.

Respondents alleged that they "knew their customer," and alleged that Cohen was known for over thirty years, both professionally and socially. Respondents believe that they have comported themselves reasonably and appropriately throughout the relationship and believe that all of Cohen's claims should be denied. Respondents alleged that Cohen's action should also be dismissed because the Hyperion class action suit was dismissed as meritless by Judge Michael Mukasey of the Federal District Court for the Southern District of New York. In addition, Respondent Doft and Co. was and still remains a substantial holder of Hyperion Securities on which Doft and Co. has suffered large losses, which losses are many times the size of Cohen's claim. Respondents believe that Cohen's claim should be denied in full and that Doft and Co. and Doft should be awarded full recovery of all cost.

RELIEF REQUESTED

Claimant requested: damages in the amount of \$26,766.43, plus interest, costs, and punitive damages.

Respondents requested dismissal of the claim plus costs

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) remain on file with the NASD. >

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, the claims against them are hereby dismissed.
2. Claimant's and Respondents' requests for costs and attorney's fees are hereby denied.

OTHER COSTS

Other than the forum fees noted 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 forum fees in the amount of \$800.00 (2 sessions x \$400.00 per session).

1. Respondent, Doft and Co. is hereby assessed \$800.00 of which \$400.00 shall be paid directly to the Claimant as a refund of his hearing session deposit and \$400.00 of which shall be paid to the NASD.
2. Respondent, Doft and Co. shall also refund to Claimant the \$100.00 filing fee previously paid by Claimant.
3. The NASD shall refund to Claimant the \$20.00 overpayment made by Claimant.

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4. Respondent, Doft and Co. is also liable to the NASD for the \$200.00 member surcharge pursuant to Section 45 of the NASD Code of Arbitration Procedure.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Edward J. Marko, Esq.

Public/Chairman

/s/
Joseph Vallo, Esq.

Industry

/s/
Gordon Keith Grandy

Public

Date of Decision: January 4, 1995